

Iranian Constitutionalism: Religious, Political, and Legal Dimensions

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Iranian Islamic Constitutional system is a bit older than three decades' history of trials, errors, and triumph. It is quite difficult and early, maybe even unfair, to reach to any conclusive remarks about the achievements and shortcomings of the Iranian constitutional system. However, a comparative study of Iranian system with that of Pakistan, Egypt, Saudi Arabia, and many other Arab and Muslim countries might be immensely helpful to examine how Muslim elite and political forces of these countries try to explain and implement their religious relevance and/or adherence to the issues related to executing state powers, social authority, and cultural reality. The rise of religious forces in the struggle for political and economic powers in Iran is not at all an isolated phenomenon in modern political history.

The rise of religious fundamentalist forces up to the top levels of state and government in Saudi Arabia and Pakistan is quite different from that of Iran. Iranian *Shiiteulema* led Iran to a successful revolutionary process by capturing state power and adopting a constitution that has promulgated Islam of the *Jafari* School of law as state religion and ideology. From this point of view, Islamic system of Iran is much more sectarian than that of Pakistan and Saudi Arabia. However, in terms of constitutional organization and its implication to the real dynamics of state and societal affairs, Islamic Iran is less dogmatic and more flexible than many other contemporary Muslim countries poised to make their governmental system compatible to the fundamental tenets of Islam. The call for a return to the "original Islam" by many Muslim political parties and regimes had ultimately put most of the vital constitutional issues in limbo and led many Muslim countries in stagnation or in chaos and confusion. Here Islamic Iran is an exception to the rule for its constitutional commitment to its people.

Unlike Pakistan or Saudi Arabia, Iran had adopted a written constitution immediately after the revolution with a view to setting the stage of political discourse and legal development. Of course, Islamic Iran did not claim that the *Quran* should be its state constitution or did not allow the religious and political forces to fight endlessly over the issues of

constitutional importance or structure of the government. This article has been deigned to provide a deeper analysis of fundamental constitutional principles of Iran, juxtaposing Iranian constitutional experiments with the Pakistani political history and state-sponsored religious orthodoxy in Saudi Arabia. Moreover, it would try to reveal the *Shia-Sunni* differences over the issues of constitutional system of governance and implementation of the theological and cultural contents to the matters of overall justice pattern to various political, civil, and economic rights.

Ideological Foundation of the Iranian Islamic Constitutionalism

Just after the 1979 Islamic revolution of Iran, speculation was very high both at home and abroad that Iran would follow the doctrines of the Hidden Imam (*Wali al-Asr*) and source of imitation (*marja al-taqlid*), according to which scope of political discourse and implementation of innovative ideas in the areas of constitutional development are very narrow. In theoretical terms, the doctrine of Hidden Imam could not be abandoned in a *Shia*-majority country like Iran. However, in practical terms *marja al-taqlid* was not followed as *vilayat-e faqih* (rule of the jurist), exponent of which was the main architect of the Islamic revolution of Iran, Imam Khomeini.

Article 5 of the Iranian Constitution established an office of religious leader for Imam Khomeini and clearly stipulated that Imam Khomeini was not the Hidden Imam, who could claim his full innocence in all religious and worldly affairs. Thus with the help of the doctrine of *vilayat-i faqih* (rule of the jurist),¹ Imam Khomeini did not allow any religious leader to emerge as a stumbling block in the way of Iranian constitutional development, and after his death Article 107 has been inserted to the constitution to put an end to disputes over the issues of *Wali al-Asr* and *vilayat-i faqih*. Article 107 stipules that a group of experts elected by the people would appoint a religious leader in

¹ "I [Imam Khomeini] stated earlier that the function of a judge belongs to exclusively to a just faqih; this is a fundamental aspect of *fiqh*, which is not a matter of dispute. Let us now see whether the three-fold qualifications for exercising the function of judge are present in the *fiqh*. Obviously we are concerned here only with just faqih, not with any *fiqh*. The *faqih* is, by definition, learned in matters pertaining to the function of judge, since the term *faqih* is applied to one who is learned not only in laws and judicial procedure of Islam, but also in the doctrines, institutions, and ethics of the faith --- the *faqih* is, in short, a religious expert in the full sense of the word. If, in addition, the *faqih* is just, he will be found to have two of the necessary qualifications. The third qualification is that he should be an imam, in the sense of the leader." In: Khomeini, Imam, *Islamic Government: Governance of the Jurist*, The Institute for the Compilation and Publication of Imam Khomeini's Works, Second Edition, Tehran, 2005, pp. 69-70.

accordance with Article 5 and 109. Article 107 does not give any special privilege to the religious leader, who is regarded as a regular Iranian citizen in the eyes of constitutional law or other laws. The Article says:

In the event of them [experts] finding someone more learned in Islamic ordinances and subjects of Islamic law or in political and social issues, or possessing general popularity or a special prominence in respect of the qualifications mentioned in Article 109, he will be appointed as the Leader. Otherwise, they elect one of them as the Leader. The Leader thus appointed [or elected] by the Experts shall assume the Vilayat-al-amr and all responsibilities arising from it. The Leader is equal to all other citizens in the eyes of law.²

This can be regarded now as one of the fundamental principles of Iranian constitutional system. During the life time of Imam Khomeini, there was also a serious controversy over the issue of the supremacy of law and its relation to the religious injunctions derived from the sources of Islamic law i.e., *sharia*. In fact, the Council of Guardians as a watch dog of the legislative powers of the parliament had started to suspend many laws by arguing that those laws were not enacted in accordance with the principles of Islam and its sources of law. This is a very age-old problem with Muslim nation-states that have been trying to develop or establish a constitutional system of their own.

With the exception of few modern Muslim states, most of Muslim nations claims in their written constitutions or otherwise that the fundamental source of their legislation, including constitutional laws, is the *sharia* or the *Quran* and *sunnah*. However, when it comes to resolve the disputes over the legal matters, religious and secular scholars are in loggerheads over the issues of God-made laws and man-made laws. This dispute had remained unresolved in many Muslim countries.

Even the author like John Austin³ (1790-1859) divides laws broadly into two categories:

Laws set by God to his human creatures, and laws set by men to men. The whole or portion of the laws set by God to men is frequently styled the law of nature, or natural law...I name those

² Article 107, *The Constitution of the Islamic Republic of Iran*, ALHODA International Publication and Distribution, Tehran, 2010, p. 63.

³ He was a noted British specialist on jurisprudence and philosophy of law. He authored his very famous book entitled *The Province of Jurisprudence Determined* in 1832 where he explained his "command theory" of law that practically links modern legal system solely to the sovereign power of a state.

*laws or rules, as considered collectively or in a mass, the Divine law, or the law of God.*⁴

Thus there is nothing fundamentally wrong with the divine character of a particular type of law. However, by raising the question of divinity of law, one cannot and should not be aggressive or should not try to impose a set of rules and regulations upon the unwilling people to follow them. In fact, in many Muslim nation-states, religious orthodoxy tended to undermine the state authority of enacting new laws for the welfare of the people, while the doctrine of *Istihsan* (equity) and *Maslahah Mursala* (considerations of public interests) are the corner stones of *sharia* law.⁵

Imam Khomeini was quite aware of this problem of Muslim jurisprudence and in 1987 he had created an institution named *Majma-e-Tashkhis-e Maslahat-e Nezam* (Expediency Discernment Council of the System) that had taken away prerogative powers of the Council of Guardians to nullify laws enacted in the parliament. Thus the ongoing deadlock between parliament and the Council of Guardians was ended during the life time of the main founder of the Islamic Republic of Iran. This is a very unique situation with the constitutional development of Iran as a Muslim nation-state. If we compare this aspect of the Iranian constitutional system with that of countries like Pakistan, Turkey, Egypt, Saudi Arabia, and others we find the situation in those countries is either in open-ended dispute or in extreme hostility between government on the one hand and religious establishment and cultural values on the other.

The Turkish ultra-secularist system, for example, even denied many religious and secular rights of the students and women for a long time. Pakistan did not know how to solve this problem and the united Pakistan had to wait for nine years to see a constitution adopted with a stipulation that no laws of Pakistan should be enacted against the *Quran* and *Sunnah*. However, in reality the united Pakistan (1947-1971) deceived its own people of making laws to limit the state authority to dominate and exploit masses unjustly. The long-lasting execution of brutal and horrible exploitative state policies in Turkey and Egypt had been carrying out in the name of secularism and socialism respectively for many decades.

However, in the recent time, the political scenario has been changing gradually because of the popular demands and very strong reaction of masses to the endemic violations of all kinds of human rights and women's right on the part of government with an intolerable high rate of

⁴ Cited from Feinberg, Joel, and Gross, Hyman (eds.). 1991. *Philosophy of Law*, Third Edition, Wadsworth Publishing Company, California, U.S.A., p. 26.

⁵ See for details, Kamali, Mohammad Hashim. 1991. *Principles of Islamic Jurisprudence*, Islamic Texts Society, Cambridge, U. K., pp. 245-296.

unemployment and object poverty in many Muslim countries. The most unfortunate phenomenon is that the governments of many Muslim countries tend to justify such a horrible political and economic exploitation of Muslim masses in the name of Islam and/or Arab nationalism.

Many western governments support Muslim regimes simply because the latter claim themselves as secular and anti-Islamic. There is no way that we can simply support or give preference to one extreme political or national ideology over another be it Arab, Turkish or Pakistani character. By its very essence, any autocratic and dictatorial regime is of same nature in terms of its anti-people and pro-fascist character. These types of regimes operate based on dynastic privileges or royal prerogatives of some families in the name of this or that ideology or doctrines. In this regard James Penner says:

Policies are aggregative in their influence on political decisions and it need not be part of a responsible strategy for reaching a collective goal that individuals be treated alike. It does not follow from the doctrine of responsibility, therefore, that if the legislature awards a subsidy to one aircraft manufacturer one more it must award a subsidy to another manufacturer the next. In the case of principle, however, the doctrine insists on distributional consistency from one case to the next because it does not allow for the idea of a strategy that may be better served by unequal distribution of the benefit in question.⁶

It appears that the Iranian religious leadership from the early days of Islamic revolution was quite conscious about the problems of implementation of people's political, civil, and economic rights in general, and women's rights in particular. Though apparently it is believed that the main catalysts of the 1979 Islamic Revolution of Iran were the *Ayatullahs*, representing predominantly the traditional *Shiite* religious forces, yet without the enthusiastic and active participation of the Iranian women and ordinary folks in the street, revolutionary process of overthrowing the Iranian Shah from the power could not be possible at all. Combined struggle of the religious, reformed socialist, and Iranian feminist forces made the Iranian revolution a reality with its special emphasis on the rights of the *mustaeafin* (oppressed and downtrodden people). In fact, the popular name of the Iranian revolution was the *encalabemustaeafin* (Revolution of the Poor).⁷

⁶ Penner, James. 2002. "Law and Adjudication: Dworkin's Critique of Positivism", In: Penner, James; Schiff, David; Nobles, Richard, (eds.). *Introduction to Jurisprudence and Legal Theory: Commentary and Materials*, Butterworths, LexisNexis, p. 367.

⁷ "With due attention to the Islamic content of the Iranian Revolution, as a movement aimed at the triumph of all the *mustaeafin* (oppressed) over the *mustakbirin*

Imam Khomeini claims that the main feature of Islamic government is that the ruling class or elite cannot claim any superiority over the ruled under any circumstances. To ensure Islamic egalitarian system of governance, the concerned governmental and religious institutions must keep adequate economic resources at hand all the time to keep every citizen financially solvent, visible and capable of raising voices against the misdeeds of the ruling elites. According to him, even clergy at the helm of political power may also turn into a formidable force to destroy any nation, country, and human dignity guaranteed by Islamic legal postulates and doctrines.⁸ Imam Khomeini says:

Islamic government is not a form of monarchy, especially not an imperial one. In that type of government, the rulers are empowered over the property and persons of those they rule and may dispose of them entirely as they wish. Islam has got the slightest connection with the form and method of government. For this reason, we find that in Islamic government, unlike monarchial and imperial regimes, there is not the slightest trace of vast palaces, opulent buildings, servants and retainers, private equerries, adjutants to the heir apparent, and all the other appurtenances of monarchy that consume as much as half of the national budget.⁹

In fact, at the core of *Shiite* ideology we can observe a strong realization of the recognition of the truth that a disproportionately big and iron-fisted government is always a threat to the interests of the people. Moreover, in orthodox circles of *Shiism*, there always remains a fear of *Yazidism* at the helm of governmental powers. However, extreme brutality carried out by the Iranian Shahs against the Iranian clergy and people had ultimately led the collapse of Iranian monarchy, which was no different than that of any other Muslim or Arab monarchy in the Middle East.

In the preamble, the Constitution of the Islamic Republic of Iran says:

This great movement, which triumphed through reliance on faith, unity, and the decisiveness of its leadership at every critical and sensitive juncture, as well as on the self-sacrificing spirit of the people, succeeded in upsetting all the calculations of imperialism and destroyed all its nexuses and institutions, thereby opening a

(oppressors), the Constitution provides the necessary basis for ensuring the continuity of the Revolution at home and abroad." In: *The Constitution of the Islamic Republic of Iran*, ALHODA International Publication and Distribution, Tehran, 2010, p.19.

⁸ See, Khomeini, Imam. 2006. *Pravleniye Fakhhiya: Islamskoye Pravleniye, Institut po sboru i izdannio trudov Imam Khomeini*, Tehran, pp. 41- 49.

⁹ See above note 8.

new chapter in the history of all-embracing popular revolutions of the world....The mission of the constitution is to realize the ideological objectives of the movement and to create conditions conducive to the development of Man in accordance with the sublime and universal values of Islam....the Constitution guarantees the rejection of all forms of intellectual and social tyranny and economic monopoly, and aims to entrust the destinies of the people to the people themselves in order to break completely with the system of despotism....As a part of this process, it is only natural that women should benefit from a larger restitution of their rights, because of the greater oppression that they suffered under the taghuti order....Thereby, while she [woman] recovers her momentous and precious function of motherhood and of rearing human beings committed to Islamic ideals, she also assumes a pioneering social role and becomes the fellow struggler of man in all vital areas of life.¹⁰

Such a pronouncement by a constitution adopted under the religious leadership in a Muslim country, was and in fact, remains quite revolutionary in compare to the dominant and orthodox religious views of many contemporary Muslim governments and establishments. This is not at all a rhetorical pronouncement of the Constitution of the Islamic Republic, but most of the Iranian state and religious institutions at central and local levels are quite serious in implementing these missions declared in the fundamental law of the country. The achievements of the ordinary Iranians and women folks cannot be trivialized by just saying that Iran has been run by a religious orthodoxy or theocracy. In fact, in Islamic constitutionalism, place and role for any kind of theocratic governance of a state is very slim, if not too negligible at the time of peace and harmony when every Muslim community can feel safe and secure and does not have to be fearful of imperialistic or military onslaught from within or outside.

These constitutional principles were not simple lip service to the Iranian people and for that matter, not even to rest of the world either. A thorough examination of the mind-set of the Iranian lawmakers may easily demonstrate that from the religious and ideological vantage points of view as well, they could not deny the fundamental rights of the Iranians as Shahs did. The adoption of these apparently newly-arrived principles in the Iranian Islamic constitution did not serve only ornamental purposes as we have witnessed in many Muslim countries. Rather these changes have led to specific governmental steps to address the need of education for all Iranians irrespective of sect and gender. As a

¹⁰ *The Constitution of the Islamic Republic of Iran*, ALHODA International Publication and Distribution, Tehran, 2010, pp. 17, 18, 19, 22, 23.

result, now more than ninety percent of Iranians are educated and more than seventy percent of university students are female.

However, still the number of *kadis* (judges) among the women is quite low. It appears that like many *Sunni* orthodox views, *Shiite* interpretation of having too many female *kadis* is an obstacle in employing more women judges. Iran still has been struggling between religious orthodox views and revolutionary ideals of changing a Muslim society to make it competitive in global marketplace and international ways of resolving disputes. Olivier Roy says:

Every time Khomeini had to clarify the complex relations between religious law and revolutionary legitimacy, he opted to put the latter first...Here also the dominance of state is written into the constitution, even if lip-service is paid to the sharia.¹¹

What Western and secular authors and observers tend to miss most is the chapter three of the Iranian Constitution that elaborates the rights of the Iranians in details. There might be two reasons behind this deliberate avoidance of the Articles from 19 to 42 of the Iranian Constitution as the fundamental rights stipulated for Iranians.¹² Firstly, many believe that under any proclaimed Islamic system, such a wide raging fundamental rights cannot genuinely be meaningful for citizens at large. Secondly, there exists a strong *Islamophobia*,¹³ which is a psychological impediment for the Westerners to recognize any legal or moral values conducive to the wellbeing of the entire society.

Many Westerners and ultra-secularists take progressive articles of the Iranian Constitution simply as a decorative aspect of Persian cultural legacy or they simply cannot believe that an overly Islamic Republic like Iran can follow such a constitutionalism allowing citizens to enjoy so many rights leading to the empowerment of people, particularly Muslim women folks. Moreover, there remains a serious gap between the ideals preached by the Muslim clergy and what really religious circles mean or do in real life.

¹¹ Roy, Olivier. 2004, *Globalized Islam: The Search for a New Ummah*, Columbia University Press, New York, p. 87.

¹² Under the title of "The Rights of the People", the Iranian Constitution declares those rights equally applicable and implementable to all Iranians regardless of ethnic group, tribe, color, race linguistic groups or any other segment of population irrespective of gender, religion and life-style some Iranians may prefer for themselves.

¹³ "Islamophobia is prejudice against, hatred or irrational fear of Islam or Muslims. The term seems to date back to the late 1980s, but came into common usage after the September 11, 2001 attacks in the United States to refer to types of political dialogue that appeared prejudicially resistant to pro-Islamic argument." In: <<http://en.wikipedia.org/wiki/Islamophobia>> last accessed on 3 December 2011.

It would not be an exaggeration to acknowledge that Imam Khomeini and many Iranian religious leaders were successful to bridge this gap significantly, especially when they tried hard to do that by reinterpreting religious dichotomies prevailing in the Iranian society. Moreover the Iranian leaders had to deal with too many complexities of their own, related to religious tenets and their purposes to be achieved through the participation of masses. The *Shiite* legal doctrines derived from the sources of Islamic jurisprudence as their official reference of interpretations of legal, social, and religious issues are quite different from traditional belief in fatalistic mentality. Olivier Roy says:

*Khomeini explains, for example, that the government might cancel pilgrimage if it is in the interests of the Islamic state to do so...But here again it is political considerations that decide what essentially Islamic, as opposed to the rules prescribed by religion.*¹⁴

Many Muslims also suffer from such wrong perception of Islamic religiosity, which is quite different from other religions. Islamic rituals are not an end by themselves; many religious rituals and doctrines are simply a means to reach the goal of ultimate spiritual salvation. Iranian Constitution in its preamble says that it regards economy also as a means rather than an end in itself.¹⁵ Ismail Buyukcelebi says:

*The universe's exact measure and balance, order and harmony, as well as that of all it contains, clearly show that everything is determined and measured, created and governed by God Almighty. Therefore, Divine Destiny exists. Such assertions as determinism, which is upheld by many people and even some Marxists, to explain such an obvious universal order and operation are tacit admissions of Destiny. But we have to clarify one point here: According to Islam, absolute determinism cannot be used in the context of human action.*¹⁶

Theoretically, it is not that difficult to articulate the ultimate goals of a Muslim or Islamic government for which they strive for. However, it is quite ambitious and challenging job for a government to convince its citizens to follow such a spiritual way of life concerning the state policies

¹⁴ See above note 11, pp. 87, 88.

¹⁵ "In materialist schools of thought, the economy represents an end in itself, whereby it becomes a subversive, corrupting and ruinous factor in the course of man's development. In Islam, the economy is a means, and all that is required of a means is that it should be an efficient factor contributing to attainment of the ultimate goal." (Cited from the Preamble of the Constitution of the Islamic Republic of Iran).

¹⁶ Buyukcelebi, Ismail. 2005. *Living in the Shade of Islam*, Light, New Jersey, USA, p.44.

and their implementation. Suppressing and regulating various types of urge or crave for material consumerism to bring the spiritual values of selflessness in governing a country, is indeed, a difficult task.

The Iranian constitutionalism has been facing many challenges in keeping the religious and political leaders incorruptible and dedicated to the envisioned ideal society it intends to establish and nurture. The perception that Iranians wanted to become a regional power is nothing new. As a nation, Iran wanted to emerge as an influential power in the Middle East with the help of the Americans and Israelis. In the mid-1960s, American government sold a 5-megawatt reactor with 6.5 kilograms of uranium of special quality very close to nuclear weapon.¹⁷ Ronen Bergman says:

Iran's desire for weapons of mass destruction was not born of the 1979 Khomeini revolution. On the contrary, the revolution actually delayed the process. The shah was very fearful of the Soviet Union, which shares a border with Iran, and wanted a position his country as an international superpower. He tried to acquire nuclear energy technology, and he signed a huge military agreement with Israel for the joint acquisition and manufacture of "missiles capable of carrying nuclear warheads."...But then, the interim prime minister appointed by Khomeini, Mehdi Bazargan, suddenly announced that all the contracts were annulled. He did so at the orders of the Ayatollah who, according to several sources, saw nuclear weapons as "anti-Islamic." Khomeini spoke of America's use of atom bombs at Hiroshima and Nagasaki and the killing of innocent civilians as evil deeds that were sharply opposed to the spirit of Islam. He did not want to replicate that sin, and so he issued a fatwa cancelling the entire project and forbidding the production of nuclear or other weapons of mass destruction. Until the end of the war against Iraq in August 1988, Iran did nothing to develop its nuclear potential further.¹⁸

In fact, there is a consensus among the Islamic jurists that the entire process of making nuclear weapon and using it, even in the battlefields, is a sin against humanity and can never be allowed by any Muslim government. Killing of innocent civilians is equally a grave sin remained to be forbidden all the time for all parties concerned. By the instigation of the major Western powers, Saddam Hussein of Iraq wanted to have weapons of mass destruction to kill many more Iranian civilians during

¹⁷ See Bergman, Ronen. 2010. *The Secret War with Iran: The 30-Year Covert Struggle for Control of a 'Rouge' State*, translated by Ronnie Hope, One World, Oxford, First South Asian Edition, p. 316.

¹⁸ *Ibid*, pp. 316-7.

his waged 'jihad' against Islamic Iran for eight years (1981-88). Acquiring nuclear weapons cannot bring any benefit to any nation, Muslim and non-Muslim alike for there is a permanent ban on it by the *sharia* injunctions. Imam Khomeini's *fatwa* about nuclear weapon was in the full conformity with the sources of Islamic law and its application.

Separation of Powers between Three Branches of Government: Iranian Experiment with Islamisation Process

Unlike many other Muslim States, Islamic Republic of Iran was careful not to allow any particular branch of government or the executive head of the state to dictate all state policies at once. In compare to the American President or Prime Minister of the United Kingdom, Iranian President is less powerful constitutionally. According to Article 117 of the Constitution, Iranian president must be elected directly by an absolute majority of votes, who exercise their voting right in any given presidential election. Article 113 puts president's position in the second place after the office of the Supreme Religious Leader. A long list of duties and powers of the religious leader that has been stipulated in Article 110 may sound that Iranian President's position is quite subordinate to the former and president himself cannot exercise his own power without prior endorsement of the religious leader. With the help of the Guardian Council (article 110), religious leader can easily disqualify someone to run for the presidency or even can dismiss him after he has been elected.

Though theoretically, religious leader holds such power, yet in reality, the supreme religious leader in Iran does not intervene directly in the activities of the President. It was an open secret that as a candidate in the presidential race in 1997, Mohammed Khatami did not have the backing of the religious leader, Ayatullah Ali Khamenei, who constitutionally could block the way for the former to become President. Moreover, Mohammed Khatami was elected for the second term (2001-2005) and completed his term of presidency without any apparent opposition from the religious leader and the Guardian Council. Olivier Roy says:

Today there are no Islamists in Iran. The former revolutionaries have turned into either liberals or conservatives...Khatami's election expressed a call for democracy that is possible only because the entire population has been incorporated into a common political space by a popular and deep-rooted revolution.¹⁹

Such kind of finding by Western author does not reflect any real dynamics of religious and political situation in Iran. Khatami earned good popular reputation of a reformist president of Iran and he

¹⁹ See above note 11, pp. 76, 77.

practically withdrew a large number of clergymen from direct political engagement. In the surface, Iran is now fully controlled by so-called Westernized and modern elite under the indirect guidance of religious leadership.

Religious control over state machinery is no more apparent as it was before. Stronger institutionalize religious influence can be observed in the judicial system of Islamic Iran. Articles 156 to 174 ensure the full independence of judiciary and provide full protection to the judges in terms of their job, social status, and economic affluence. Article 164 says that

[a] judge cannot be removed, whether temporarily or permanently, from the post he occupies except trial and proof of his guilt, or in consequence of a violation entailing his dismissal. A judge cannot be transferred or re-designated without his consent ...The periodic transfer and rotation of judges will be in accordance with general regulations to be laid down by law.

One of the endemic problems with the administration of justice in the Muslim world is the absence of good codified laws in the hands of the judges and also there are too many conflicting ideas and precedents of the past. Islamic Iran has come up with very rational and prudent ideas to resolve this problem. Article 167 stipulates that a judge have to use codified laws thoroughly and cannot ignore any codified law by showing the argument that a particular law is not compatible with the sources of *sharia* law. Article 167 says:

The judge must endeavor to base his judgment in each case on codified laws. If he cannot find such basis, he should deliver judgment on the basis of authoritative Islamic sources and reputable ruling (fatwa). He may not refrain from admitting and examining cases and delivering judgment on the excuse of silence of or deficiency of law in a matter, or its being general or ambiguous.²⁰

Thus one can observe that the judges in Islamic Iran are quite powerful and at the same time are duty-bound to dispense justice diligently and without any delay. Complexities within different schools of *sharia* and contradictory positions of different *madhhabs* are not supposed to hinder the system of administering justice in Iran.

However, in some areas, Iranian official interpretations of the Quran and other sources of *sharia* almost remained as orthodox as many Arab countries. For example, a knowledgeable Muslim is aware that there is no provision in the Quran that a person can be or should be killed by

²⁰ Article 167, *The Constitution of the Islamic Republic of Iran*.

stoning for any crime and this is a pre-Islamic punishment practiced by non-Muslim communities in the then Arabia. When and how after the demise of the Prophet of Islam such an inhumane and cruel punishment had become an acceptable form of punishment theoretically within the Muslim communities? Many supporters of this kind of punishment used some *hadiths* that do not have full credibility and authenticity to become prophet's example to be practiced in the first place. Nalise Ruthven says:

*Zina, meaning both adultery and fornication, is punishable by flogging - one hundred strokes for each partner, irrespective of whether they married...This was amended in Islamic law, during the reign of the Caliph Umar, to death by stoning for offenders who are or have been married.*²¹

There is no reason why *Shiite*Iran would accept such kind of so-called Sunni position referred to the Caliph Umar. In fact, this is not a religious issue; rather it has direct legal implications. However, in theological discourse, many *Shias* are keen to prove that Umar as a Caliph was wrong in his legal interpretation here as well and like to bring the opinion of Imam Ali as the final words to deal with this serious legal matter. Thus the *Shias* tend to avoid the interpretations of the *Quranic* injunctions presented by others and wish to follow the examples set by Imam Ali.

It is still surprising to note that many *Shia* clergymen also could not abandon harsher punishment introduced by the Second Caliph. Legal issues in Islam cannot be remained personal or sectarian and ultimately people should have direct access to the original sources of Islam. This problem of rudimentary legal opinion based on *fatwa* directives revisits Muslim nations again and again. Thus it is not surprising that it took three decades for the Iranian clergymen to stop completely any kind of stoning to anybody for any kind of sin and/or crime.²² Annemarie Schimmel says:

Persian poetical tradition has praised Hallaj; -sometime in terms of pity, sometimes in admiration, and sometimes rejecting him or declaring him to be merely a beginner on the mystical Path...In Iran, the name of the martyr-mystic has become a commonplace in the verses of almost all poets....Even among the taziyas, the plays

²¹ Ruthven, Nalise. 2006. *Islam in the World*, Third edition, Oxford University Press, p. 64.

²² In August of 2008 stoning as a form of punishment was suspended or stopped in Iran completely by adopting a new legislation. In fact, stoning to death as a mode of punishment has no place in Islamic jurisprudence, though many Muslim societies have inherited this horrible form of punishment from the Greeks, Romans, and from the pre-Islamic practices. Even the imprisonment as a widespread form of punishment was not a commonplace in Islamic history for the criminals.

written in commemoration of Husayn ibn Ali's martyrdom at Kerbela on the tenth of Muharram 680, Enrico Cerulli has discovered one piece that deals with the fate of Hallaj, who is here in strange juxtaposition with SMAulana Rumi and his mystical preceptor and beloved Shams-i Tabriz.²³

To find a very strict demarcation between sin and crime in Islamic jurisprudence is a complicated and difficult task to accomplish. Legislative acts through codified laws in any Muslim country have never been succeeded fully to differentiate criminal offence from misconduct, mistake or negligence of civil nature. After Islamic revolution in Iran some religious leaders strongly opposed any hard-line policies in regard to criminal justice system. However, the killings of hundred of religious leaders by *Mujahedin-e-khalk* and its direct involvement with foreign agents have hardened the criminal justice system in Iran. On the other hand, many Arab and Muslim religious circles had been trying to prove that Islamic revolution in Iran was not in right track in terms of implementation of the Quranic system of punishment.

Independence of judiciary in Islamic jurisprudence is of absolute character and even the legislative body cannot have an upper hand over judiciary by just adopting new laws without popular mandate identified through the avenues of *ijtihad*. Islamic Iran had to face this dilemma from the very beginning of the triumph of Iranian Ayatullahs at the helm of political and military powers in the country. Controlling state powers, religious leaders might become similarly dangerous like the secular Muslim elite, who in post-colonial era have remained unaccountable to the state and judicial authorities of Muslim nation-states. Iran under the political leadership of President Mohammed Khatami, who himself was a clergyman, has solved this problem successfully and made every segment of Iranian society accountable to the judicial system that had been developed under the spiritual leadership of Imam Khomeini.

Keeping the independence of judiciary under the influence of religious circles, how could Iran have a progressive system of governance in its relation to legislative and executive powers of the country? In fact, even under the regimes of the Iranian *Shias*, *ulema* in Iran had never lost its independence as it was in most of the Muslim countries. Parallel to the state authorities and judiciary, Iranian *ulema* did retain power and influence in resolving disputes in their respective localities. The role of Iranian *ulema* had ultimately shaped the course of development to the Islamic revolution of Iran in 1979. In many secular circles, there was a strong belief that Iranian religious leadership would not appreciate the necessity of the separation of powers at the highest levels of governance.

²³ Schimmel, Annemarie. 2008, *Mystical Dimensions of Islam*, Islamic Book Trust, KL, ASEAN Edition, pp. 73, 75.

That speculation has been proved to be partially true time to time in diving the responsibilities between the religious and secular circles, both at the provincial and central levels. Joseph Schacht says:

The kadi cannot give judgment in favour of his near relative. On the other hand, his competence extends beyond the judicial office, and includes the control of the property of the missing person, the orphan, the foundling, and the person with restricted capacity to dispose, of found objects, pious foundations, and estates of inheritance. His power to dispose goes further than that of the guardian, even than that of father; he may, for instance, lend the money of an orphan...Finally, the kadi is in charge of public welfare in general, e.g. he forces the speculator on rising prices of food (muhtakir) to sell; he is, generally speaking, 'the guardian of those who have no other guardian'.²⁴

This was the main challenge the Iranian government had to face after the eight years long war against Bathist Iraq under the tyrannical rule of Saddam Houssain, who had been used by the Western and monarchical regimes of the Arab world to destroy Islamic Iran in every way possible. Islamic Iran could not go for any dramatic and/or progressive legislative process that might harm the Iranian religious leadership that had been suffering from image problem in the Muslim world because of its Shiite character and flavor. *Shias* have remained a minority all through the fourteen hundred years of Muslim history and Iranian *Shiite* legacy was only five hundred years old. As a result, most of the Muslims around the world were quite suspicious and/or skeptical in regard to the revolutionary Iran and its intension to become a part of mainstream Islamic movement.

Islamic governments of Iran had been thinking that they were creating a new history of Islamic resurgence by bringing the Islamic values and ethnics in the forefront of political and religious struggle to save Muslim nations from further neo-colonial domination and cultural aggression. Iranian religious leadership and revolutionary forces in Iran could not imagine that they were isolated and remained practically alone in their struggle against Western and Muslim tyrannical forces around the world.

In many issues, religious orthodoxy could not come out from the rhetorically theological internecine fighting within itself and it was inviting revolutionary forces as well to be a part of fanatical and/or fundamentalist movement for the so-called pure revival of Islam. Maybe that was one of the reasons why it took a longer time for the Iranians to go for more progressive set of legislation in regard to reform its religious, political, and cultural systems. A good number of Iranian *ulema* and

²⁴ Schacht, Joseph. 1964. *An Introduction to Islamic Law*, Oxford at the Clarendon Press, p. 188.

revolutionary elements in Iran have been trying to make *maslahat* (public good) a serious relevant issue to the system of legislation and governance for the benefit of the masses, while others are engaged in corrupt methods of amassing wealth in their hands. Olivier Roy says:

*Such an approach is in the line with the traditional concept of 'public good (maslahat), which stresses the spirit and the meaning of law as opposed to a formal conception of it. The terms like adab (educated man's good manners), fitrat (man's nature) and ekhlaq (ethics; ihlak in Turkish) are given new importance. Norms are reformulated in terms of values, and are subsequently 'negotiable', meaning that the issue is not to follow the letter but the spirit of the law...Ethics and moral values are propounded because the strictly legal approach does not work, or for neo-fundamentalists has to be recast as a code.*²⁵

From the considerations of social, political, economic, and constitutional development, Iran was a right place for an Islamic revolution to set the stage for a series of progressive changes to empower downtrodden people, especially extreme poor and under-privilege women. Iranian Islamic forces have rightly called their revolution dedicated to the *mustaefin* (poor, neglected, and underprivileged).

Western and tyrannical Muslim regimes around the world did not try to portray Islamic revolution of Iran as a Proletariat Revolution because hard-core communist and socialist elements could be accommodated in the revolutionary upheaval and its aftermath history of the country. Islamic Iran stood firmly against all kinds of hegemonies coming from the capitalist and communist blocs. However, Islamic Iran's anti-monarchical stand has made Tehran a target of military aggression of Arab monarchical and dictatorial regimes in general and Iraqi Bathist leader Saddam Houssain in particular, who wished to take advantage of anti-Iranian sentiments in the Arab world.

Eight years-long war against Bathist Iraq could made Islamic Iran a totalitarian state devoid of any constitutional system of governance based on the principles of separation of powers at the highest levels of government. Fortunately, Iranian leaders, religious and Westernized, were in consensus that they would strictly follow the constitutional system of transfer of power through popular elections and no branches of government should intervene in the affairs of others. The success story of the Iranian constitutionalism and power-sharing system based on

²⁵ See above note 11, pp.189 -191.

popular mandate was either undermined or under-estimated by most of the Western and Muslim governments so far.

There is a widespread speculation that the Iranian President has no real powers and every time he wishes to do something he needs a prior permission from the religious leadership of the country, especially from the Supreme Leader. This is practically a serious misreading about the powers and functions of the Iranian President in particular and the executive branch of the state in general. The chapter IX of the constitution of the Islamic Republic of Iran consisting of 38 articles (from 113-151) specifically explains what are the powers the Iranian President can exercise in regard to domestic as well as foreign affairs. Stipulating the position of the President, Article 113 clearly says that the Iranian President is the second most powerful person in the country after the Supreme Leader. Article 113 says:

*After the office of Leadership, the President is the country's highest official. He is responsible for implementing the Constitution and presiding over the Executive, except in matters directly concerned with the Leadership.*²⁶

Some readers find too many limitations of the powers of the Iranian President, who apparently cannot exercise any significant state power just by his own initiatives. Iranians are very reluctant to give any one person or institution all state powers as their previous monarchs used to exercise. The trust building avenues between the people and religious leaders are quite open and it was a religious tradition in Iran since its emergence predominantly as a Muslim nation.

However, many Iranian Shahs or Kings underestimated the broad-based alliance between the Iranian *ulema* and regular Iranian people. In fact, that misreading of the minds of the Iranian clergy and religious people ultimately lead to the successful orchestration of the Islamic Revolution of Iran based on grass root support of all people of Iran, especially the Iranian youth and women folks. Iranian youth and the women were the main catalysts of the Islamic Revolution of Iran.

The official and unofficial clergy were somewhat hesitant to make the revolutionary events expedite and they took about one hundred years to take decisive stands to side of the people against the monarchical regime up to its complete abolition. In this background and with some bitter experiences with some early presidents just after the Islamic Revolution in 1979, the Iranian people did not want to have a president with too

²⁶ Article 113, *The Constitution of the Islamic Republic of Iran*.

many powers. Moreover, ratification process of the Iranian Parliament to the President works in relation to foreign affairs is quite justified by any modern constitutional system around the world. Article 125 says:

*The President or his legal representative has the authority to sign treaties, protocols, contracts, and agreements concluded by the Iranian government with other governments, as well as agreements pertaining to international organizations, after the approval of the Islamic Parliament of Iran.*²⁷

This is a very prudent, wise, and realist way to handle the powers of a president elected by the people directly, otherwise he or she might become autocratic and may even act against the national interests as we have been witnessing in many Muslim and Third World countries. In some cases, the head of the government can sign treaties with other countries about which people may even not aware of the terms and conditions of those signed treaties. However, problem with the Iranian President is that he is not the head of the government, but the head of the State. As a constitutionally elected president he can never exercise any power conferred upon the office of the Supreme Leader of the country. Here the paradox is that the president is elected by the voters directly, still his powers are constrained by an unelected spiritual authority named as the Supreme Spiritual Leader of the country.²⁸

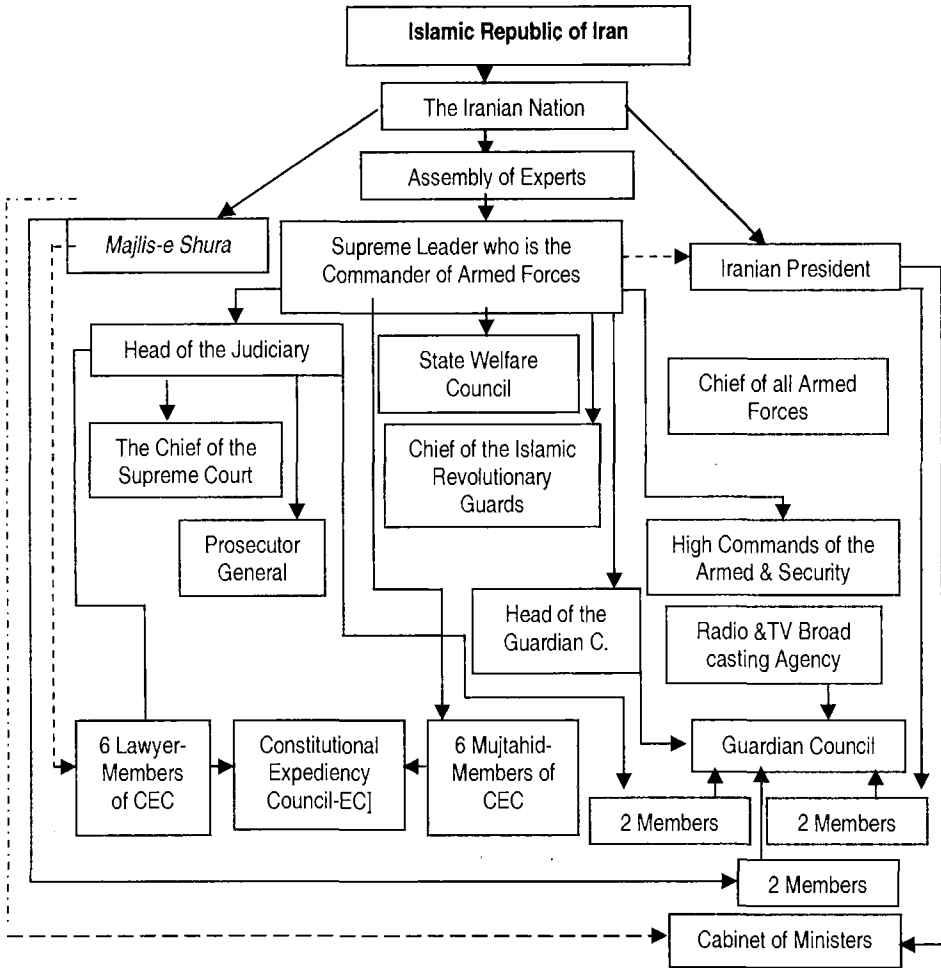
²⁷ Article 125, *The Constitution of the Islamic Republic of Iran*, ALHODA International Publication and Distribution, Tehran, 2010, p. 71.

²⁸ "The president is the second highest ranking official in Iran. While the president has a high public profile, however, his power is in many ways trimmed back by the constitution, which subordinates the entire executive branch to the Supreme Leader. In fact, Iran is the only state in which the executive branch does not control the armed forces."

In: <http://www.iranchamber.com/government/articles/structure_of_power.php> last accessed on 3 December 2011.

State Structure of the Islamic Republic of Iran²⁹

(People, Selected and Elected Leaders)



From the depicted presentation of the form of the Iranian government, it is hard to have full and clear-cut picture of the power configuration designed by the Iranian Constitution. However, a duality can be detected at different levels of the state governance and the Iranian governmental system, which is rather very complicated and complex. The diagram gives a bit of distorted picture about the relationship between the Supreme

²⁹ Here we are mentioning a diagram made by Nur Houssain Majidi in his book titled *Islamic State and Leadership* (in Bengali) published by the Iranian Cultural Center in Dhaka, June 1997, p. 108.

leader and the president. The Iranian President constitutionally is not at all a weak institution unless it loses the endorsement of the Supreme Leader, who has a higher responsibility to keep the nation united. By doing great things and signing good legislations, Iranian President may emerge as a very powerful institution.

There is a kind of combination of selection and election methodologies in the process of establishing state structure, constitutional system, and governmental institutions. For example, the Constitutional Experts Council (Assembly of Experts) is a selected body, but the Guardian Council keeps a very vigilant eye on persons who are eligible to become the members of the Assembly of Constitutional Experts. Apparently, it is very similar institution like the House of the Lords of the English system. But in terms of its formation and functions, the Assembly of Experts has no similarities with that of the House of Lords in England. Moreover, the Assembly of Experts works like a Constitutional Court that we find in Germany and other countries. There is also the Highest Security Council consists of the following members:

1. President,
2. Speaker of the *Majlis-e Shura-ye Eslami* (Parliament),
3. Head of the Judiciary,
4. Chief of all Armed Forces,
5. Chief of the Planning and Budgetary Division,
6. Two Representatives of the Supreme Leader,
7. Ministry of Foreign, Home, and Information Divisions (National Security Division), and Ministers,
8. Relevant Ministries (Minister of Defense, Chiefs of the Armed Forces and Islamic Revolutionary Guards).

You may interpret Article 123 of the Constitution of the Islamic Republic of Iran in a very dubious ways. You may even find the Iranian President somehow helpless in the face of conflict between him on the one hand and the Supreme Leader and the Parliament on the other. It is true that President cannot afford to make the Parliament and the Supreme Leader angry at the same time as Article 123 stipulates:

*The President is obliged to sign the legislation approved by the Parliament, or the result of a referendum, after it is forwarded to him and the legal stages are covered, and to forward to the relevant authorities for implementation.*³⁰

From an apparent reading of the Constitution of the Islamic Republic of Iran, one may reach to a conclusion that the Head of the Judiciary, Chief Justice of the Country and the Prosecutor General maintain the similar types of powers and functions, which are practically shared on equal footing. However, in reality the Prosecutor General is a much smaller institution compared to the Chief Justice of the country.

³⁰ Article 123, *The Constitution of the Islamic Republic of Iran*.

The Head of the Judiciary may appear to many outsiders a higher post than the Chief Justice of the country. In reality, the Head of the Judiciary is an executive post with too many administrative functions to protect the judiciary from the financial difficulties as well as corruption. On the other hand, the Chief Justice of the country can maintain his superiority and neutrality to all because of his total independence from all other religious and state institution and authorities.

The relationship between the Constitutional Expediency Council and the Guardian Council is also complicated and for an outsider it is quite difficult to tell which one is standing above over the other.³¹ An analysis of the electoral laws demonstrate that the Guardian Council can only oversees and approves the candidacy of the aspirants wish to become elected as parliament members. The Guardian Council in terms of its original power of approving the members of the Assembly of Experts (AOE) performs a very crucial job. The AOE as body of supervising the legislative functions of the Parliament shares powers with the Guardian Council. The Council of Guardians headed by the former president Ayatollah Ali Akbar Hashemi Rafsanjani had asserted a lot of powers in interpreting the constitution and determining the compatibility of the laws passed by Parliament with the doctrinal stands of Islamic jurisprudence.

Because of that historical development in the Iranian constitutional system, some analysts practically try to establish that the elected Parliament members, in real terms, does not have the capacity to enact laws with the prior approval of the Council of Guardians (COG) The argument was that the COG had practically enjoyed a veto powers over the lawmaking authority of the Iranian Parliament. In practical terms as well it appears that the COG maintains an effective veto power over the legislative function of the Parliament. By juxtaposing the powers and function of the COG with the Council of Experts and Parliament, we find a unique system of check and balance in the lawmaking process and its deliberation. This is the reason why every candidate aspiring to become PM (Member of the Parliament) has to prove that he or she is not a corrupt person before the COG. Whether or not the COG is doing its work accurately is one of the main functions of the AOE. Both these councils have trying to keep the electoral system in Iran fair, neutral and incorruptible as much as possible. In this respect, Article 112 states

The State Expediency Council will meet by the Leader to decide what is most expedients whenever the Guardian Council considers a bill approved by the Islamic Parliament of Iran to be contrary to

³¹ The COG comprises of 12 prominent jurists. The Supreme Leader appoints 6 of them and other six are appointed by the Parliament.

*the principles of the Sharia or the Constitution and Parliament is unable to secure the satisfaction of the Guardian Council on the basis of national expediency. The State Expediency Council will also meet to consult on any issue referred to it by the Leaders or related to its duties as mentioned in this Constitution.*³²

Iranian constitution is a rigid one; no person or body can change or amend any Article or any rule of it so easily. In Iran, there is no constitutional court and no institution except, the Guardian Council which can interpret any of the constitutional provision officially. However, wide ranged academic interpretations are allowed and encouraged for the purposes of assimilation of good constitutional ideals and thoughts in view of its further development. Moreover, other constitutional institutions and lawmakers take serious note of any well-articulated academic criticism of constitutional system. Article 98 clearly sets a provision of amending any type of constitutional amendment. The Article says:

*The right of interpretation of the Constitution is vested in the Guardian Council and is subject to the consent of three-fourths of its members.*³³

Family and Women's Rights under Iranian Constitution

Any discussion about women's rights in Iran would face serious prejudice from Western and Muslim secular view-points, simply because of different kinds of paradigms they are habituated to use against traditional and tribal phenomena occurring in many parts of the Muslim world. Moreover, for various types of cultural and political reasons, many Muslim nation-states have adopted many discriminatory laws against women of their respective countries by arguing that those laws were found or based in the sources of Islamic law or jurisprudence. What many Westerners, including noted authors, do not see is that in Islamic Iran, there has been a great shift from the orthodoxy to reformisms that had also engulfed many Muslim nation-states, especially Asian Arab countries, Pakistan, and Afghanistan. Khaled Abou El-Fadl says:

Wahhabism exhibited extreme hostility to all forms of intellectualism, mysticism and sectarianism within Islam... Wahhabism also rejected any attempt to interpret the divine law from a historical, contextual perspective; in fact, it treated the vast majority of Islamic history as a corruption of, or aberration from, true and authentic Islam. The dialectical and indeterminate hermeneutics of the classical jurisprudential tradition were

³² Article 112, *The Constitution of the Islamic Republic of Iran*.

³³ *Ibid*, Article 98.

considered corruptions of the purity of the faith and law. Furthermore, Wahhabism became very intolerant of the long-established Islamic practice of considering a variety of schools of thought to be equally orthodox, and attempted to narrow considerably the range of issues upon which Muslims may legitimately disagree... Perhaps the most extreme form of Wahhabi fanaticism took place recently, on 11 March 2002, when the *mutawwa'in* (religious police) prevented schoolgirls from exiting a burning school in Mecca, or from being rescued by their parents or firemen, because they were not "properly covered". At least fifteen girls are reported to have burned to death as a result.³⁴

This kind of orthodoxy has no place in Islamic theology and jurisprudence. Unfortunately, because of these kinds of incidents, Muslims have been suffering from serious image problem for quite long time and many Westerners and Muslim secularists had speculated similar kind of behavior and/or practice from the Iranian revolutionaries. Hardly any type of mainstream Western and Muslim media could imagine that the Iranian Islamists would behave differently. However, they were surprised to see the Iranian women's involvement in the revolutionary process of the post-Shah Iran.

Practically, without the direct and enthusiastic involvement of the Iranian Muslim women, the triumph of the Islamic revolutionaries in Iran could not be sustained at all. Countries like Pakistan and Saudi Arabia, by suppressing women folks, have practically done unimaginable damage to Muslim culture and Islamic heritage that had been always very supportive to underprivileged in general and women in particular. Muslim religious establishments in many Muslim countries either do not understand the importance of the empowerment of women in their respective countries or do not know how to take the empowerment system as a continuous process through education and professionalism.

A vast majority of Muslim and Western authors, who try to understand Islamic tenets and an appropriate system of criminal justice to run a so-called Islamic government, usually end up with discovering a penal law based on private vengeance and retribution against criminals committing crimes such as *zina* (unlawful sexual intercourse), *kadhif* (false accusation of such crime), *shrub al-khamr* (unlawful alcohol or wine consumption), *sarika* (theft), and *kat al-tarik* (highway robbery).

³⁴ El-Fadl, Khaled Abou. 15 March 2002. *The Orphans of Modernity and the Clash of Civilizations*, 2008, cited from Saudi Police 'Stopped' Fire Rescue", *BBC News Report*, <http://news.bbc.co.uk/1/hi/world/middle_east/1874471.stm> last accessed on 3 December 2011.

Pakistani legislation has made a mess of these understanding of crimes and practically everything went against the interest of the poor and women, whose protection was at the core of Islamic jurisprudence derived from the sources of Islam. Orientation and foundation of Saudi and many other Muslim countries revolves around the idea of "*hadd* (plural *hudud*), Allah's 'restrictive ordinances' *par excellence*; they are death penalty, either by stoning...or by crucifixion or with the sword...cutting off hand and/or foot...flogging with various numbers of lashes...Imprisonment (*habs*) is not a punishment, except as *tazir*, but a coercive measure which aims at producing repentance (*tawba*) or ensuring a required performance. There are no fines in Islamic law."³⁵

Muslim jurists interested in supporting and/or protecting Islamic ideal society from notorious criminals and heinous crimes perpetrated against society and individual citizens, have been suffering from this tunnel vision syndrome of delusion of miscalculating the effects and sequence of the means and ends of Islamic justice system as a whole. The worst victims of such delusive understanding of ways and means of combating crimes are always poor people and women folks.

Islamic revolution of Iran did offer an alternative to that distorted understanding of criminal justice and set the stage for Iranian women to become at the center of revolution, family system and societal activities, including professional drive for excelling the skill at working place. As a result, today Iranian women are much more advanced than their counterparts in many Muslim countries around the world. Such a progress has remained either unnoticed or unrecorded, because of the anti-Shiite and anti-Iranian feeling in many parts of the Muslim world.

Constitutionally Iranians brought the family at the core of their nation-building efforts. Article 10 of the Constitution of the Islamic Republic of Iran says:

*As the family is the fundamental unit of Islamic society, all laws, regulations, and relevant planning must be directed towards facilitating the formation of family, safeguarding its sanctity and the stability of family relations on the basis of Islamic laws and morality.*³⁶

Main concern of any activist for women's rights in Iran is how to make a balance between family life and professional engagement. Neither the Western feminists nor Muslim secularists would ever agree that the women's rights could be better served or protected on the basis of Islamic

³⁵ See above note 24, p. 175 -76.

³⁶ Article 10, *The Constitution of the Islamic Republic of Iran*.

ethics. However, feminist movements in the Muslim world got so many bad images that a regular Western mind can hardly think of.

Western social scientists, historians, and feminists have been either deliberately hiding the failure of feminist movements or do not know what went wrong with those movements and their consequences on family life in the West. Only some of the very recent objective studies on feminist movements in the West have started to reveal its failure to bring any substantial positive change in the lot of women's folks in the West.

Article 1118 of the Iranian Civil Code clearly stipulates that under all circumstances "wife can independently do whatever she likes to do with her property." Any feminist should be happy with this Article. However, the preceding Article (1117 of the same civil code) says that a "husband can prevent his wife from occupations or technical work which is incompatible with the family interests or the dignity of himself or his wife."

This is quite an unacceptable legal principle for Westerners and maybe of all kinds of feminists as well. It appears that the intension of the legislator here is to create obstacle for Iranian women to become sex-workers or engage in any other so-called modern profession not allowed in Islam. However, question may arise why such prohibitive measures had not been taken against husband as well. It is true that Muslim woman as a wife and mother still wish to play more traditional role in the family than becoming breadwinner like their Westerner counterparts. Even in the most secular Muslim country like Turkey, one in four adult women only work outside home. The Turkish Odyssey says:

To very briefly summarize the position of women in Turkey today, it can be said that unless you are a woman living in a metropolitan city and financially independent, life is still likely to be bound by the customs of traditional family life.³⁷

Under the Iranian Shahs, the Iranian women were also bound by many social and cultural customs, but apparently they were free to do whatever they like. In reality, in terms of educational and professional achievements, neither the Turkish nor the Iranian women could claim any substantial progress in compare to the Western women. What century-long secularism could not bring to the Turkish women, Iranian revolution wanted to offer that in practical terms by providing them a legal framework based on Islamic ethical values. That desire has been reflected in many Articles in the Iranian Civil Code as well.

³⁷ Turkish Odyssey, In: <<http://www.turkishodyssey.com/turkey/culture/people.htm>> last accessed on 07 May, 2011.

Article 1119 of the Iranian Civil Code makes it clear that a girl or women "can stipulate any condition to the marriage which is not incompatible with the nature of the contract of marriage, either as part of the marriage contract or in another contract." In this Article, Iranian women has been empowered in the line of Islamic legal thought in a way that satisfies the demands of Islamic and Muslim cultural values on the one hand and empowers a married woman in such a way that she can obtain a divorce order though a court at her sweet will or just by appointing an attorney to do the job.

In contrast to Pakistani or Saudi legislation, this is a revolutionary legal arrangement for obtaining divorce by a married Muslim woman. Many observers and legal experts simply do not appreciate such a provision, which is fully compatible with the Islamic tenets and ethical principles.

Most of the Sunni jurists tend to argue that because of the temporary marriage³⁸ system sustained by the *Shia* communities, such a liberal position can be drawn by the Iranian *ulema*. This is again a misreading of the Iranian Islamic revolution and its consistent efforts to give better treatment to Muslim women, who are the most genuine catalysts of Islamic reforms both at state and family levels. The empowerment of the Iranian women through legal avenues is practically unparallel in the contemporary Muslim world.

As regards women rights, a news report says:

"Iran's 35 million women have greater freedoms and political rights than women in most neighboring Arab states, particularly Saudi Arabia."³⁹ Such an achievement still has remained unnoticed; either we do not see the legal stage set forth by the Iranian constitutional system or we can not relate the ongoing reforms of the Iranian society to its legal development that is of paramount importance. Iranian constitution and other laws give special emphasis on the importance of family relation by providing a wide range of rights to the women folks of Iran. Islamic views of Iran about the stronger family ties are very clear to comprehend and we can see its sensitivity to the women's rights and their implementation. The Constitution runs:

³⁸ "Fixed-term marriage puts the limit on a woman that she must not be the wife of two men at the same time. Evidently such a restriction upon the women itself necessitates a restriction upon the man. When every woman has exclusive attachment to a particular man, every man will necessarily be attached to a particular woman...When both parties have the means for permanent marriage, and have full and satisfactory information regarding each other, and have full trust in each other, they may very well bind themselves in the pact of marriage for ever." In: Mutahhari, Murtada. 1981. *The Rights of Women in Islam*, WOFIS, Tehran, pp. 31, 37.

³⁹ In: <<http://www.msnbc.msn.com/id/26547004/>> last accessed on 09 May, 2011.

Such a view of the family unit delivers women from being regarded as objects and tools for the promotion of consumerism and exploitation. Thereby, while she recovers her momentous and precious function of motherhood and of rearing human beings committed to Islamic ideals, she also assumes a pioneering social role as a fellow struggler of man in all vital areas of life, thus shouldering a more serious responsibility and enjoying a higher worth and nobility from the Islamic viewpoint.⁴⁰

Human Rights Situation in Iran: Constitutionalism vis-à-vis Fundamentalism

To any ordinary or regular Westerner, and even to the most Muslim secularists, human rights situation in Iran is very appalling because of its adherence to the doctrine of apostasy. For many Muslims, punishment for an apparent apostasy is death sentence. Death sentence as a punishment is no more acceptable to many Western and European countries. Among the Muslim countries, Saudi Arabia, Iran, and Mauritania keep the death sentence as a legal form of punishment for a public act of apostasy. At present, many human rights related organizations have been actively engaged in many activities related to death penalty abolition campaign.

In the overall perception of penal law, mainstream American thought still favors to keep death penalty against the perpetrators of heinous and violent crimes such as murder, rape, kidnap, armed robbery and so forth. In many Christian religious perceptions, abortion or homosexuality has been regarded as heinous crime to be persecuted with severe punishment including death penalty. From this perspective, Iranian penal law is not at all different from the American or Saudi system of criminal justice.

However, though officially Tehran denies the presence of homosexuals in Iranian soil, for such a crime of a known homosexual may end up with a death penalty⁴¹ in a similar fashion that has been practiced in the case of drug dealers engaged in illegal business of narcotics coming through the borders of Afghanistan and Pakistan. If we examine the criminal procedure law and the degrees of closed door and/or transparent character of its application, we can observe a lot of differences in the administration of criminal justice in these countries.

⁴⁰ *The Constitution of the Islamic Republic of Iran.*

⁴¹ In 2007 "on a visit to Colombia University in New York, Iran's hardliner President Mahmoud Ahmadinejad said "there were no homosexuals" in Iran in response to a question from a student. "Iran: Death penalty for man accused of homosexuality," "In: <<http://www.adnkronos.com/AKI/English/Security/?id=1.0.2506821385>>last accessed on 17 May, 2011.

While prison population in the USA and Russian Federation has exceeded two millions in either case and more than 50% of registered marriages have been falling apart in many countries of the world. According to the reports of Amnesty International⁴² by September 08, Iran has executed 232 persons accused of serious crimes during last eight months, while during the entire year of 2007 China topped the list of such execution with a total number of 407. These are not simple statistics but rather great indicators of where we are moving as nations and mankind. Jurisprudentially, Islam may serve as a great orientation in solving many of these problems in a positive manner that would allow us to be genuinely civilized and peace loving.

Islamic legal system has some fundamental differences with any other system of law in regard to dealing and ensuring all kinds of property rights for daughters, wives, and mothers. However, most of those legal postulates are either not codified or shrouded with many ambiguities in the imagination of a vast majority of Muslims. As a result, when it comes to the complexities of practical implementation of laws, then prudent and wise opinion and/or verdict hardly can be found.

From historical perspective, it appears that Muslim jurists wished to have a legal system combining the features of common law system and traditions of civil law of governance based on wider perspectives of rule of law aimed at the spiritual salvation and justice for all. For example, Iranian legislators are still quite flexible in regard to the customs of polygamy. "Iran is one of the few - along with Syria and Tunisia- that require the consent of the first wife before a husband can take another." Still polygamy is rare in Iran, where most people frown on the practice."⁴³

Islamic legal vision is not limited to a set of ideals or ideas, rather it is a universal world view capable of finding reasonable solutions to almost all difficult problems of any age ranging from agrarian society to knowledge-based and technologically-driven highly industrial society. In this regard, most Muslim communities of modern era have failed miserably to demonstrate that Islamic law is the only alternative to the existing dominant powers that have been destroying ecological balance and degrading human dignity of indigenous and non-white people around the world.

The level of socioeconomic development and industrialization process in the Muslim world was not at all favorable to the emergence of a better

⁴² See for details, <<http://www.amnesty.org/en/library/recent>> last accessed on 15 May, 2011.

⁴³ Dareini, Ali Akbar, "Iran bill to ease polygamy angers women", <http://news.yahoo.com/s/ap/20080904/ap_on_re_mi_ea/iran_polygamy> last accessed on 17 May, 2011.

legal system than any Western system either based on case-made laws and/or enacted laws promulgated by the legislative bodies that has been protecting vested interests of richer sections of the population. Furthermore, in most cases, existing legal and judicial systems in the Muslim world based on the societal process are either grossly inefficient or completely inadequate to deal with urgent political and legal disputes and controversies at hand diligently and honestly. It is stated that

Article 23 [of the Family Protection Bill] required men simply to obtain a judicial permit to remarry to confirm they can provide financially for the new wife and that both wives will be treated equally. Under current legislation, a man in most cases has to prove his first wife's consent for another marriage...article, 25, imposed taxes on the dowry, the money or property pledged by the man to his bride, which she can claim at any time through the course of marriage or when getting a divorce. Iran's judiciary, which had originally drawn up the bill, said the two disputed articles had been added by the government.⁴⁴

The original legislation drafted by the Iranian Parliament's Judicial Commission as a form of bill did not have these two Articles, which were ultimately dropped from the enacted law.

In the absence of a strong precedent system based on which justice can be delivered quickly and efficiently, Muslim legal systems in place are either too expensive or corrupted to bring any substantial benefit to ordinary masses, especially to the poor and downtrodden people. This is not a Muslim legal phenomenon; this a phenomenon prevalent now in the entire world where poor and underprivileged are being seriously discriminated in the court of law. Overemphasis on some procedural matters ultimately frustrates many objectives of quick and timely discharge of justice to the aggrieved parties. There is also serious confusion about how to use the sources of Islamic law as positive laws enforced by state agencies directly. In this respect, Islamic Iran has proved itself innovative in resolving disputes.

There is no doubt that distinction and relationship between state law and customary or religious law is always a problematic one. Even the very definitions of these laws tend to create more confusions rather than solving any real problem. The entire lawmaking process in any society and state cannot be put a side just for internal maneuvering of some stakeholders, who are always interested to put themselves in some special legal positions with some kind of special treatment.

⁴⁴ "Iran MPs amend polygamy bill after protests", In: <http://news.yahoo.com/s/afp/20080908/lf_afp/iranwomenrightsparliament_080908123012> last accessed on 17 May, 2011.

Islam is unique in the regard. From its very inception, Islam stands by the side of the downtrodden people of all religions, races, and gender. However, throughout the centuries, Muslim rulers have been distorting the very core mission of Islamic jurisprudence and constitutional system. Moreover, later on the colonialists took the full advantage of the situation and brought the entire Muslim world under brutal exploitation of colonialism, wild capitalism, and vulgar consumerism. Amartya Sen says:

Unlike the British rule in India where the rulers remained separate from the ruled, Muslim rulers in India were combined with the presence of a large proportion of Muslims in the population itself. A great many people in the land embraced Islam, so much so that three of the four largest Muslim national populations in the contemporary world are situated in this subcontinent: in India, Pakistan and Bangladesh. Indeed, the only non-sub continental country among the top four Muslim populations in the world, Indonesia, was also converted to Islam by Indian Muslims, mostly from Gujarat. Islam was by then a native Indian religion.⁴⁵

Islam is much more native in Iran than in the Indian sub-continent. However, because of its Shiite identity⁴⁶ with the Americanization process under the Iranian *Shias*, most outsider Muslims underestimate the influence of Islam on the Iranian psyche and culture. Throughout the Islamic history, some Muslim nations were more enthusiastic than others in adapting Islamic system within their own culture. As a nation, Persians were very enthusiastic in accepting Islamic principles and values in their state system. Commenting on that phenomenon the founder of Jafari school of law, Imam Jafar Sadique (699-765),⁴⁷ referred to the following Quranic verse and wanted to find a universal principle of organic relationship between Muslims of different nationalities and ethnic groups:⁴⁸

⁴⁵ Sen, S Amartya. 1999. "Islamic Star over India." This article was presented/read at the UNESCO lecture series titled "An Assessment of the Millennium" held in New Delhi.

⁴⁶ A large scale, even forceful, conversion of the Iranian Muslims from Sunnism to Shiism took place about four hundred years ago, specially during the reign of the King Shah Abbas, who at the age of seventeen inherited throne in 1588 and died as the most powerful Iranian Shah till then in 1629.

⁴⁷ He is regarded as the Sixth Imam of the Twelvers (*ithna asharia*, followers of the twelve Imams) and his interpretations have been recognized as an official *fiqh* (school of jurisprudence) of the Islamic Republic of Iran constitutionally.

⁴⁸ See for detail, Mutahhari, Murtaza. 2004. *Islam o Iraner Parasparik Abodan* (Mutual Contribution of Islam and Iran), Embassy of Islamic Republic of Iran, Dhaka, pp. 27-59.

"If you turn away from God, He will cause other people to take your place, and they will not be the likes of you."⁴⁹ To Imam Jafar, who was born in Medina at a traditional and religious family, Arabs were already in the process of forgetting Islamic principles, while Persians had been taking Islam as a way of living seriously. It is important to note that during those days, Persian Muslims were the followers of *Sunni-Hanifimadhab* and *Shia-Sunni* conflicting issues were not at the focal point for the Iranian Muslims. At present most Iranians along with many million Arab Shiites believe that Imam Jafar was one of the teachers of Abu Hanifa, whose teachings were the main terms of reference for Persian Muslims in regard to the rulings of Islamic sources up to the end of sixteen century. By converting themselves from *Sunnism* into *Shiism* and by orchestrating the Islamic revolution in 1979, the Iranian religious leadership has attempted to bring Islamic tenets to the hearts and minds of the ordinary Iranians.

Prior to the Islamic Revolution in 1979, Iranians were in complete seclusion in the Muslim World and the country's orientation to the anti-Islamic ideologies had been established to the eyes of Iranian public too vividly. Moreover, like many other Muslim countries, ordinary Iranian men and women lost their dignity as Muslims and human beings in the hands of the rulers. Human rights and fundamental constitutional rights were grossly violated for many decades in the name of Westernization, Americanization, modernization, secularization, and Islamization.

Islamic Iran has been trying to confront the above mentioned odds at home and abroad, and thus it has been taken as a challenge to the West as well as Sunni world. Moreover, Iranian leadership wishes to engage the Westerners and secularists in its own terms, those are either appeared to be unacceptable to the secular world or detrimental to the interests of Western and monarchial business circles.

Despite its many setbacks, Islamic Iran is keen to fill the gap left behind the Soviet Union, which kept the bi-polar world competing all over the planet for an international system based on socialist principles. Islamic Iran, though denounced the socialist ideals as an orientation for humane governmental system, in reality it has been trying to combine a kind of socialist system of distribution of wealth with the capitalist form of production. This is the reason that Iranian leaders are in loggerheads with one another over the issues of the State's role in regulating various aspects of creation of wealth and distribution of natural resources.

⁴⁹ Quran, 47: 38.

Agreement and Disagreement between the Supreme Leader and the President

Compared to the Bolshevik or Chinese revolutions, Iranian Islamic revolution has remained a mystery for the outsiders. Even a large number of reputed Western authors have been failing to appreciate many human faces of “Iranian Fundamentalism” and find popular religiosity in Iran as a source of division rather than a source of unity for necessary reforms.⁵⁰

After the Islamic Revolution of Iran in 1979, the first elected president Bani Al-Sadr was dismissed from the office for his disobedience to the Iranian Shiite clergy. This is apparently a paradoxical situation in the Iranian constitutionalism. Constitutionally the Iranian President cannot appoint or dismiss any minister without prior approval of the Supreme Religious Leader.

Imam Ayatullah Khomeini was the main architect and founder of the Islamic Iran and as a result, his authority remained unchallenged up to death in 1989. Neither the Iranian people nor the clergy did raise any angry voice against the Imam Khomeini's leadership even when he dismissed the first elected president, who found to be dubious in his loyalty to the people's trust and religious endorsement.

After serving two years as a president, Bani Sard was removed from the office quietly and quickly. Since then most Iranians and foreigners alike understand that an Iranian president does not have any constitutional authority to challenge any desire, wish or order of the Supreme Leader. A fair reading of the Iranian constitution also would tell us that an Iranian President should not dare to challenge the Supreme Leader in anyway or form.

However, the authority enjoyed by the founder of the Islamic Revolution in Iran and the constitutionally granted power to Ayatullah Ali Khameini as the Supreme Religious Leader cannot be compared. As a result, Rafsanjani and Khatami did not find much difficulties in exercising their political powers without much consultation with the Supreme Leader Ali Khameini.

Mahmoud Ahmadinejad was a big surprise for many quarters as he was first 'secular' Iranian president who commended the full confidence from the powerful groups of the Iranian clergy, including the Supreme Leader without whose support Mahmoud Ahmadinejad could not win in the presidential race in 2005 and 2009. However, during the second term in office, President Mahmoud Ahmadinejad has exhausted most of his

⁵⁰ See above note 11, pp. 76- 92.

foreign cards, which have gradually overshadowed by the popular uprising of the Arabs against their own dictatorial regimes.

Many Westerners thought that Islamic Iran would see similar type of uprising against the so-called Mullahs, who have been sharing state powers with the civilian and military bureaucracy for last few decades. In 2009 Rafsansani could not defeat Ahmadinejad in presidential race because the latter enjoyed the backing of many religious institutions and Revolutionary Guard (RG). In fact, the RG had played the instrumental role in making Ahmadinejad as the President of Iran twice and set the political tone and flavor for him. The rhetoric of the RG has a special importance for the Iranians at both peace and war. It has been believed that in May 2004 the RG set a voice like as follows:

Our missiles are ready to strike at the Anglo-Saxon civilization, and when we get the order from the leader we will launch them...There are twenty-nine sensitive targets in the United States and the West. We already ...know how we will attack them. We have a strategy for destroying the Anglo-Saxon civilization and to eradicate the Americans and the English. Iran has the means to attack Israel's nuclear facilities so that no trace of them will remain.⁵¹

Iranian President has pronounced this kind of message many times and in the Muslim world, no official quarter took it seriously. However, Iranian public have enjoyed the rhetoric of their president against the Americans and Israelis, who could launch a whole scale military attack on Iran long ago. Iranian religious and political leaders had played shrewd games of diplomatic maneuvers not to make them as a military target of the West anymore.

Apparently, the Supreme Religious Leader of Iran, Ayatullah Ali Khomeini, had continued his unfettered support to President Mahmoud Ahmadinejad up to April, 2011, when President sacked the Minister of the Intelligence. It appears that Ali Khomeini was quite unhappy with and annoyed by the President's earlier decision to appoint his brother-in-law Asfandiyar Rahim Mashaie as Iran's vice president. Mashaie had to resign immediately in the face of people's opposition. In fact, it was a violation of the constitutional provision on the part of the Iranian President, who according to Article 121 of the constitution is duty bound of "refraining from every kind of arbitrary conduct."⁵²

Many Iranians believe that during his second term in office since 2009, President Ahmadinejad deliberately challenged the constitutional

⁵¹ Cited in: Bergman, Ronen. 2010. *The Secret War with Iran: The 30-Year Covert Struggle for Control of a 'Rouge' State*, translated by Ronnie Hope, One World, Oxford, First South Asian Edition. p. 296.

⁵² Article 121, *The Constitution of the Islamic Republic of Iran*.

authority of the Supreme Leader Ali Khomeini. As a result, President dared to fire Meselhi, who was replaced by the president himself as the Minister of the intelligence. This has led a direct clash between the President and the Supreme Leader (SL), who reinstated Meselhi in the post of the Ministry of Security and Intelligence (MSI).

President Ahmadinejad refused to deal with Meselhi as the Chief of the MSI. However, the Members of the Shura Council demanded that President Ahmadinejad implement Khomeini's orders. In response, Ahmadinejad refused to participate in cabinet meetings. More than one hundred conservative Members of the Parliament (MP) immediately drafted a resolution demanding the appearance of the President in front of the Iranian parliament to respond to their questions directly. Many more MP swiftly signed the resolution and demanding the questioning of the President Ahmadinejad about how he dared to disobey the Supreme Leader of the country.

Khomeini's representative in the Revolutionary Guard, Ali Saiedi, warned President Ahmadinejad and advised the latter to obey the directives and orders of the Supreme Leader Ali Khomeini. In the Iranian constitutional system, the president's power is not unlimited. President's authority, though has been received from the direct popular votes of the people, its application is only possible with a prior endorsement of the Supreme Leader (SL), who is subsequently guided by the *Sharia* sources.

President Ahmadinejad did not attend two cabinet meetings as a protest against the Meselhi's presence as a Minister. He was withdrawn from his scheduled meeting with senior Ayatullahs (in Qum), whose support played crucial role in his reelection in 2009. It appears that the tug-of-war between President Ahmadinejad and the SL would continue over the assertion of the process of exercising Presidential power. Ayatullah Meshba, Mortada Aqa Tahrani and many others gave the president Ahmadinejad strong warning of impeaching him from the post of President, if the latter fails to obey the SL.

The ongoing disputes, disagreements, and apparently political battles between the Iranian President and the SL have been caused by their different interpretations of religious doctrines, foreign policies, and so forth. However, underlying economic problems are ingrained in the perception of future prosperous and independent Islamic Iran.

Any Iranian President might be interested in bringing tougher economic control in all its formal and informal sectors of production and distribution. On the other hand, most religious institutions wish to have their informal economic stakes going bigger than ever before. Even in the countries, such as Turkey and Russia informal economy still dominate many factors in the formal sectors of their economies. Euclidian

approach to resolve these economic, political, and religious disputes would not be helpful to the Iranian President or the SL.

It is a serious misunderstanding that the SL is above all kinds of law, once he is elected by the Committee of Experts. It is not at all a correct interpretation of the Iranian constitution that Iranian President has no real power to run that state affairs and the SL leader can intervene whenever he likes. Frequent interventions of the SL into that powers and functions of the President may discredit the SL with grave consequences. Apparently, SL is not accountable to anybody or any organization, including Parliament, President, People, and not even to the Expediency Council or members of the Guardian Council. But putting his prestige, honesty, and efficiency on line, SL leader can be replaced by another influential religious leader.

Article 111 of the Iranian constitutions stipulates:

Whenever the leader is incapable of carrying out his constitutional duties, or loses one of the qualifications mentioned in Articles 5 and 109, or it becomes known that he did not initially possess these, he will be dismissed...In the event of the death, resignation, or dismissal of the leader, the Parliament of Experts shall expedite the appointment of a new Leader. During this time a Council consisting of the President, Head of the Judiciary, and a jurist from the Guardian Council, as decided by the State Expediency Council, shall provisionally assume the duties of the Leader. In the event of any one of them being unable to fulfill these duties, for whatsoever reason, another person shall be appointed by the State Expediency Council, with due observance of a majority of the jurists on the [Provisional] Council.⁵³

Conclusion

Prior to the 1979 Islamic revolution of Iran, Islamic features of Iranian Muslims did not attract outsiders to investigate how deep the Islamic influence were on the overall psyche of Iranian Muslims. It was a strong belief that Iranians were more Americanized than any other Muslim nation or country.

However, Iranian society was not secularized as its neighbor Turkey or it was not an orthodox as Pakistani or Afghan society. The 1979 Islamic Revolution of Iran caught the entire world with a great surprise. Many Western powers and most of the Arab regimes were determined to bring back some secular segments of Iranian society led by the military to the power to neutralize the strong presence of religious elements at every steps of the system of governance and judiciary.

⁵³ Article 111, *The Constitution of the Islamic Republic of Iran*.

By holding a referendum just after the revolution, Iranian Islamic circles got an endorsed of 98.2% of popular votes to govern the country in accordance with the principles of Islam i. e., *Shiite Shariah*. However, still no one knew exactly what type of Islamic governance the Iranian revolutionaries wanted to establish in pursuance of their envisioned state-system with judiciary upholding the moral standard of Islamic legality and the rights of *mustaefin* (poor/oppressed/ downtrodden).

It was clear that because of its Shiite and Persian heritage, Islamic Iran could not follow a system similar to that of Saudi or Pakistani model. How fundamentally Iranians could be different from the Pakistanis and Saudis in their interpretations of the Islamic tenets about the core constitutional issues and judicial system was a main query for all quarters concerned. Winner of the Nobel Prize in literature, V. S. Naipaul was also wondering about the issue and was traveling Islamic Iran just after the revolution. Finding not many resentments among the Iranians against any overly system of Islamic governance Naipaul writes:

The paper [Iranian newspaper] was for the revolution, but it was protesting against what had begun to come with revolution, all the Islamic bans on alcohol, western television programmes, fashions, music, mixed bathing, women's sports, dancing...The revolution continued. The election results showed – although there were charges of rigging – that the people had done as Khomeini had told them, and voted in mullahs and ayatollahs to the constitutional Assembly of experts⁵⁴

Unlike orthodox religious circles of many important Muslim countries, revolutionary Iran was maintaining to have an Islamic legitimacy based on popular mandate. In compare to any other important Muslim country, national elections in Iran are more credible, fair, and transparent and in contrast to other religiously bias Muslim state, Islamic Iran tends to seek out their legitimacy in the public opinion through traditional and constitutional ways. This Iranian constitutional reality has remained ignored or suppressed because of the fact that the Western powers did not recognize Iranian electoral system as a democratic one. Moreover, both the Western and Muslim media divide Iranian religious and state authorities into fundamentalist and reformist camps respectively.

After the demise of the Imam Khomeini in 1989, many observers strongly predicted that Iranians might abandon Islam as a state ideology and would return to the process of westernization as introduced by the Iranian Shahs. In post-Khomeini era, it was not that hard to divide the Iranians into conservative and reformist camps. However, the dividing lines between theses conflicting groups were blurred rather very quickly.

⁵⁴ Naipaul, V. S. 1982. *Among the Believers: An Islamic Journey*, Penguin Paperback, U. K., pp. 28, 39.

Mohammed Khatami, a clergyman was accepted as a leader of the reformists and was elected as a president of the country in 1997.

Mohammed Khatami was elected as a president of the second term and ran the country successfully up to 2005. Even the Iranians still do not know how successful Khatami was as a president and what the areas where he had failed. Akbar Hashemi Rafsanjani, who was also an Iranian president for two terms (1989-1997), tried to become the president in 2009 by using his conservative credential, but failed to defeat Mahmoud Ahmadinejad, who by then has proved himself more religious and orthodox as a president than any of his predecessors.

Rafsanjani's failure to become elected as a president again in 2009 had surprised many Iranians as well and the religious circles immediately made him the Chairman of the Expediency Discernment Council, which is supposed to resolve any dispute over legal issues between the Parliament and the Council of Guardians. If someone is serious and careful to see the system of check and balance in the Iranian constitution, it would not be difficult to find that no one person or institution at the system of governance and judiciary can use any kind of power absolutely, including initiating a new bill to be enacted as a law or just adopt a new law and repeal an old one.

Such a kind of separation of power is almost absent in any other Muslim country. Iranians, liberals or democrats, and religious conservatives or secular anti-Islamists, in a vast majority did not want to go back to any kind of kingship or militarism that still remains a pattern of exercise of state powers in most Muslim and Third World countries. By uprooting the monarchical circles from the state powers, Iranians were in great danger of military takeover of the entire state machinery and in fact, many outsiders had been predicting a military rule in Islamic Iran.

In every important Muslim country, from Sudan to Indonesia, we can witness such a military takeover of civilian government at any time of crisis or vacuum in state power. Most outsiders were in view of that the Iranians would follow the footsteps of Pakistanis or Egyptians in exercising their powers over their own population.

However, the Iranian religious and governmental leadership went for a pragmatic way of running its state affairs and established a constitutional system of their own. Iranian religious pragmatism and political pluralism was either misunderstood or undermined by the Western and neighboring Muslim powers. The assertion of Iranian masses at state and regional levels had cost the Iranian nation huge price and casualties in terms of its human and financial resources.

Constitutional system that the Iranian leadership adopted and continuously has been revising to reflect the unfolding power configuration of Iranian society appears to be working for them and empowering the under-privileged, including women folks of the country.

Apparent religious domination over the political power has been diminishing gradually and state organs have been becoming people-oriented than ever before.

However, western cultural influence on Iranians has not been diminishing as the religious leadership wished for. Iranians in general are now less hostile than Turkish or Pakistani Muslim to the hegemony of American regime in the Arab or Muslim world. Iranians are happy as long as the Americans or Israelis do not attack the Iranian soil and target to humiliate them as Muslim nation or *shūite* power that has its own world view and way of life to follow.

Knowingly or unknowingly, Iranians along with the Turks and Russians have been replacing the Soviets in terms of their antagonism to the Western powers in the region and beyond. For the Russians and Turks it is a fight for their national survival and for the Iranians it is equally so who tried to set the tone for a worldwide Islamic renewal, revitalization, and revival far beyond the boards of Arab or Muslim countries. This phenomenon is an integral part of the global religious and spiritual awakening for the protection of mankind, environment, eco-systems, and human dignity in general and individual rights in particular. This has now become a common yearning of millions of people of many religious and non-religious faiths across the boards as we all inherited one human race to share only one planet to live and thrive so far.