



# Constitutional Obstacles: Human Rights and Democracy in Iran



## **Iran Human Rights Documentation Center**

The Iran Human Rights Documentation Center (IHRDC) believes that the development of an accountability movement and a culture of human rights in Iran are crucial to the long-term peace and security of the country and the Middle East region. As numerous examples have illustrated, the removal of an authoritarian regime does not necessarily lead to an improved human rights situation if institutions and civil society are weak, or if a culture of human rights and democratic governance has not been cultivated. By providing Iranians with comprehensive human rights reports, data about past and present human rights violations and information about international human rights standards, particularly the International Covenant on Civil and Political Rights, the IHRDC programs will strengthen Iranians' ability to demand accountability, reform public institutions, and promote transparency and respect for human rights. Encouraging a culture of human rights within Iranian society as a whole will allow political and legal reforms to have real and lasting weight.

The **IHRDC** seeks to:

- Establish a comprehensive and objective historical record of the human rights situation in Iran since the 1979 revolution, and on the basis of this record, establish responsibility for patterns of human rights abuses;
- Make such record available in an archive that is accessible to the public for research and educational purposes;
- Promote accountability, respect for human rights and the rule of law in Iran; and
- Encourage an informed dialogue on the human rights situation in Iran among scholars and the general public in Iran and abroad.

## **Iran Human Rights Documentation Center**

129 Church Street

New Haven, Connecticut 06510, USA

Tel: +1-(203)-772-2218

Fax: +1-(203)-772-1782

Email: [info@iranhrdc.org](mailto:info@iranhrdc.org)

Web: <http://www.iranhrdc.org>

Photographs:

The front cover photo is of the Parliament Building in use by the *Majlis* since 2004. The portrait is of Ayatollah Mohammad Taghi Mesbah-Yazdi, a member of the Assembly of Experts.

© 2010 All Rights Reserved.

Iran Human Rights Documentation Center, New Haven, Connecticut

# Constitutional Obstacles: Human Rights and Democracy in Iran

Mehrangiz Kar

March 2010

**This commentary was first published in 2006 under the full title of “Constitutional Obstacles to the Realization of Human Rights and Democracy in Iran.” It was written by Iranian attorney and human rights activist Mehrangiz Kar with assistance of Scholars at Risk. It is republished by IHRDC with the express permission of both Mrs. Kar and Scholars at Risk.**

Special thanks to those programs assisting scholars and advocates worldwide that face persecution and other threats because of their efforts to strengthen knowledge in their home countries through their research, teaching and advocacy. I am particularly grateful to those programs that have provided me support since arriving in the United States, including the Scholars at Risk Network based at New York University, Harvard University's Scholars at Risk Committee, the IIE Scholar Rescue Fund, Harvard's Radcliffe Institute for Advanced Study and Carr Center for Human Rights Policy, as well as the Harvard Law School's Human Rights Program. Scholars at Risk is a network of universities and colleges that works to promote academic freedom and provide assistance to threatened scholars, primarily by hosting them as temporary professors or researchers on their campuses. More information about Scholars at Risk is available at [www.scholarsatrisk.org](http://www.scholarsatrisk.org).

*Mehrangiz Kar*

# Contents

|  |           |
|--|-----------|
| <b>Preface</b>   | <b>1</b>  |
| <b>Chapter One: Lost Opportunities and Eternal Conflicts</b>   | <b>3</b>  |
| Traditionalism as an Obstacle                                  | 3         |
| Power-Seeking Royal Court as an Impediment                     | 7         |
| Absolutism, Traditionalism, and the Contemporary Situation     | 9         |
| <b>Chapter Two: Freedom and Political Development</b>          | <b>12</b> |
| Definition of Freedom  | 12        |
| Conclusion   | 15        |
| Post-Revolutionary Reinstallation of Censorship                | 16        |
| <b>Chapter Three: Security and Equality</b>                    | <b>23</b> |
| Discriminatory Laws  | 23        |
| <b>Chapter Four: Political, Economic and Cultural Freedoms</b> | <b>29</b> |
| Political Structures   | 29        |
| Elections  | 29        |
| Political Parties  | 30        |
| Freedom of Association   | 31        |
| Non-governmental Organizations and Civil Society               | 32        |
| Urban and Rural Municipal Councils                             | 34        |
| Political Offenses   | 34        |
| Jury   | 35        |
| Cultural Structures  | 37        |
| Economic Structures  | 39        |
| <b>Chapter Five: The Legislative Process</b>                   | <b>44</b> |
| The Legislature in Action                                      | 46        |
| Legislative Techniques   | 47        |
| Recommendations  | 49        |

## **Chapter Six: The Structure of the Executive**

**51**

|  |    |
|--|----|
| The Gap between Responsibilities and Powers                    | 54 |
| Contradictions   | 55 |
| Women's Participation  | 56 |
| Recommendations and Hopes: The Need to Revise the Constitution | 57 |

## Preface

Meaningful political participation in any country is realized when certain conditions are met, making the free expression of a plurality of political views and activities possible. These conditions allow for the toleration of a diverse range of ideas, forcing no political players into silence and allowing for a defined degree of freedom of expression in public life. Such conditions for political participation and debate are met when laws in support of the ideals of political participation are made in unequivocal terms, making it impossible for state functionaries and institutions to offer their own individual interpretations of the laws for driving their opponents out of the public sphere or preventing them from running for public office, or even physically removing them from public domain by imprisoning them.

For more than a century, various layers of Iranian society have anticipated the creation of such unequivocal laws with the hope that one day such laws would make political participation in public life routine, as well as integral, to the functioning of the Iranian political system. However, from 1997 these “expectations of the people” were considered amid the slogans and demands of certain political elites, hereinafter referred to as “the reform movement” or simply the “reformists.” In fact, with the unexpected election of Mohammad Khatami as Iranian President in 1997, political participation became a prerequisite to political development. In other words, political participation was understood as a necessary condition for tapping into available human resources and moving forward with the business of building a more efficient and tension-free – that is, politically developed – political system.

As in countless other contexts, Iranian political development has historically been defined in different ways. Nonetheless, the common factor among them has and continues to be a respect for fundamental principles of freedom and participation. Even more importantly, the political elites who have stressed on the slogan of political development (*tose'e-ye siyasi*) as their mantra, have rightly emphasized the rule of law and judicial reform as a cornerstone of both freedom and participation. There are good historical reasons for this. In Iran, governments have often been inclined to despotism and, as a result, successive people have turned to the law as a means of demarcating the boundaries of state power and protecting people from the excesses of the state. Such efforts have also entailed the call for an independent judiciary. Given the fact that in Iran, there has never been a clear definition of either the rights of the individual or their liberties and that such a definition had to come from a judge or functionary of the state, the aspiration to have an independent judiciary should not come as a surprise nor should it be a surprise that in the struggle for political development, political participation and individual security, the Iranian judiciary has become a major battleground during the reform period. Reformists pushed for judicial change while opponents of reform used the judicial apparatus to insist on leaving the historical prerogative of defining the scope of individual freedom and obligation to the discretion of judges who have been conveniently selected because of their support for the prevailing status quo.

Using judicial discretion, or more accurately indiscretion, the Iranian judiciary has openly become the strong arm of despotism. For instance, instead of supporting the popular policies of former President Khatami, which encouraged open discourse through the expansion of a free press, the judiciary became the mechanism through which those very policies have been stunted. The Iranian judiciary remained oblivious to the fact that the founders of many of the new publications promoting free discourse were themselves members of the ruling establishment, “insiders” if you will, with strong and deep links to the Islamic revolution of 1979. The closure of publications was complemented by attacks on other popular institutions such as the parliament, also not run by opponents of the Iranian political system but by “insiders,” whose allegiance was tried and true.



Given the political opposition that was generated by this insider-led momentum for reform, hereinafter referred to as the “reform movement,” some very basic questions arose in the minds of the Iranian people. Perhaps most prominent among them is the question: is it at all possible to initiate a gradual process of political development and reform from within the Islamic system? This is a particularly important question for the Iranian youth born after the revolution who constitute the largest portion of the Iranian population and have no memory of the previous monarchical regime.

Clearly, to answer these questions, many factors have to be taken into account. These factors include: the historical experience that has created a mentality of confrontation between the citizen and the state in the minds of the Iranians, the existing legal and judicial apparatus, the legal and legislative contexts (which include the Shari’a or religious laws), the legal and judicial protection afforded citizens, the legislative processes, and the operation and role of executive branches of the state.

Straight or unambiguous answers to these questions will be neither easy nor simple. But this is precisely the task of this short monograph in interpreting the developments of the so-called reform years of 1997-2005, or in other terms, the “Khatami era.” I have no intention of writing a long historical essay about how the Iranian Islamic System came to be. Nor am I interested in engaging in a discourse against the Islamic system. Long-lasting reform of the Iranian political system must come gradually and internally through the interaction of various forces that exist within the Iranian society. Change will not arrive at our doorsteps overnight and certainly will not emerge through external impositions or through commands from the top layers of the Iranian political system. There are many forces in society that long for reform, but there are also forces that resist it with vengeance.

My intent here is far more modest. What I propose to do in the following pages is to lay out the operation of the Iranian political system as it stands today, at what seems to be the end of the reform era (2005), the obstacles that it continues to pose for political participation in theory as well as practice, and the principles that need to be taken into account in order to overcome these obstacles. As a practicing lawyer, I have repeatedly come face to face with the implementation of the Iranian legal system in defense of my clients. As a political writer, I have also engaged in many conversations about the inadequacies of existing laws, as well as political institutions. And, finally, as a political prisoner, I have had direct and personal encounters with the repressive arms of the state. Although what follows is not a political biography, the interpretations offered are very much influenced by years of struggle in hoping to improve the Iranian political system and years of reflections about needed changes. My reflections are offered not as an accusation or complaint, but as part of a national conversation about the direction Iran should take in the years ahead.

## Chapter One: Lost Opportunities and Eternal Conflicts

Much of the contemporary history of Iran is a narrative of clashes between aspirations for and obstacles of political participation. Herein is also a tale of conflict between modernity and tradition, at times leading to dramatic consequences including two revolutions. One starting point for this tale is the call for a constitutional monarchy in 1906; a change from an autocratic system to a constitutional monarchy was the galvanizing motivation and aspiration of Iran's Constitutional Revolution of 1906 to 1911. This was the first of two twentieth century revolutions that resulted in the formulation of constitutional documents, both insisting on the creation of political frameworks based on legal premises. The second document came into existence after the Iranian Revolution of 1979.

Each of these sets of documents served as partial materialization of aspirations to limit state authority and assure political liberties enshrined in law. In the case of the first constitutional document, however, both limitations on state authority and certain political liberties failed to materialize for essentially two reasons: a deeply entrenched traditionalism as well as the refusal of the royal courts to share power. In the case of the second document, powers with vested interests in the continuation of authoritarianism are again obstructing popular aspirations for political participation, setting the stage for an open and public conflict between forces of reform and increasingly reactionary forces. While royal power no longer exists in contemporary Iran, an institutional and individual desire to stand above the law remains to this day. Understanding the enduring forces of traditionalism and authoritarianism is important in identifying the lost opportunities in establishing a legally-based political framework, lost opportunities that more than anything else have become the primary markers of Iran's modern history.

### Traditionalism as an Obstacle

Prior to 1906, the Iranian political system was an autocratic and hereditary monarchy. Kings ruled and their positions were handed down from father to son. There were no parliamentary processes and accordingly, people played no substantive role to speak of in influencing the policies of the state. If excesses and injustices went beyond tolerable limits in one part of the country, rebellions would break out, leading either to the suppression of the rebellion or a replacement of the local rulers by the central authorities. The judiciary consisted of Shari'a or religious courts in which religious judges presided and resolved relevant cases. Judges meted out punishments according to their own individual understanding of religious laws. Such religious judges had full power and authority with little or no oversight, maintaining that authority within their geographical locality as long as they recognized the king as the Shadow of God on earth.

The Constitutional Revolution led to the promulgation of a royal writ decreeing that the king should reign, but not rule. A national consultative assembly (*Majlis*) was to be elected by the free vote of the people (men only). For the first time in the history of Iran, the constitution endorsed the principle of popular participation within the provisions of constitutional law. The landmark constitution also provided for modes of participation, including election laws, and vested the responsibility of promulgating other participatory legislation to the workings of the *Majlis*, or parliament.

And so at the beginning of the twentieth century, the Iranian people were on course for political participation under a parliamentary system. Such a development naturally shook the archaic political structure, though in the end it failed to unsettle its foundation—one still marked by traditionalism. Accordingly, the nascent parliamentary system soon found itself confronted by religious and traditional forces that perceived the constitutional mode of government as an affront to prevailing religious tenets. Using the vocabulary of ordinary people, these forces objected to religious rules being “trampled upon” through Western-style legislative processes, warning the “common man” of the dangers of “losing his religion.” Using their pulpits, they denounced the decidedly ‘modern’ legislation as an affront and threat to a sacred Islam.

The pressure of a group of clerics and their followers, led by the cleric Sheikh Fazlollah Nouri, who was subsequently hanged by the constitutionalists for his support for continued autocratic rule, was a warning to the supporters of the new constitution. Fearing a popular backlash and the loss of their proposal at large, supporters of the constitution hastily added a supplement that, in fact, significantly changed the essence and direction of the document—originally based on civil legislation and the ideals of full popular participation. The supplement, whose content will be discussed below, was endorsed largely out of recognition of the fact that it would be necessary to placate a population still largely illiterate, rural and under the influence of the anti-constitutionalist clerics.

In the meantime, increasingly progressive sectors of society, influenced by modernist ideals propagated in the works of social, literary and artistic elites, were convinced that the panacea for all social and political ills was in fact the “law.” Led by a group of intellectuals and a number of constitutionalist clerics, they considered religious-based traditionalism to be the primary source of sociopolitical backwardness, insisting that society ought to become familiarized with such concepts as freedom, equality, growth and development. They hoped to promote such ideals by replacing an ancient tradition born of Shari’a with parliamentary legislation.

Despite the successes of the constitutional movement, the victory was not yet complete to the point that an Iranian contemporary historian has pointed out that “the Constitutional Revolution of Iran in 1906 happened at a time when many of the preconditions for its success were lacking. There was no central authority, no efficient bureaucracy, no true communications network and no extensive awareness of belonging to a common set of values which existed in a specific geographical area called Iran.” It was this absence of preconditions that enabled its opponents to emphasize that constitutional rule contradicted divine laws.

In some ways, a history of confrontation persuaded the proponents of “modern ways” to undertake, for instance, the translation and publication of Western works in order to introduce these views and values into the society at large. On the other hand, the same confrontation convinced the supporters of traditional values to make utmost use of their influence over the traditional sectors of the population—creating a tension in order to place pressure on the constitutionalists. The aforementioned supplement to the constitution was the initiative of a group of people who wished to avoid an all-out anti-constitutional uprising. In this document, they attempted to prove that constitutional monarchy was not at odds with the tenets of Islam. Ultimately, Articles One and Two of the supplement were integrated into the document. These articles declared:

1. The official religion of Iran is Islam and the sect of Ja’fari Asna Ashari (Twelve Imamate Shi’ism) and the Shah of Iran must be a follower and promoter of this faith.
2. The National Consultative Assembly (*Majlis*) may not in any age or time have its legislated laws in opposition to the sacred rules of Islam and the laws legislated by the Prophet of Islam. The discernment of conflict between legislated laws and the Islamic rules should be entrusted to the ulama (clergy). A board of no less than five mujtahids (clerics of higher standing) and religious faqihs (religious lawyers) who are also expected to be acquainted with the conditions of the present age are to be chosen in the following manner. The marjas (sources of emulation) of Shi’ites will introduce the names of twenty qualified ulama to the *Majlis* for the latter to choose five or more from among them as the conditions of the time necessitate and appoint them to a board whose duty is to study and ponder over articles raised in the *Majlis* and reject any article which they deem in contradiction to the sacred rules of Islam.

Despite the passage of the supplement, the gradual secularization of legislative processes continued. In fact, the second article of the supplement was put into effect only for a few preliminary sessions of the *Majlis*,

later losing its influence though it was never actually repealed; in more ways than one it was a dead article of law. Nonetheless, the forces of traditionalism still dominated the minds of some members of the *Majlis*. Continued legal obstacles to women's enfranchisement, for example, serve as prime manifestation of such traditionalism.

Among the laws passed by the *Majlis* in 1909 was Article 10 of the electoral law, which deprived the following groups from the right to vote for parliament:

- Women
- Persons who have not reached legal maturity or are under religiously determined guardianship
- Persons whose "exit from the sublime religion of Islam" has been established before a fully qualified religious judge
- Bankrupt persons by default
- Beggars and all those who earn their living in dishonest ways
- Those who have committed murder and theft and other convicts who are deserving of Islamic *hudud* (religious punishments for serious offenses)
- Political convicts who have risen against the foundation of the national state and the independence of the country

Article 13 of the same law forbade the following persons from running for parliamentary seats:

- Princes of royal blood, meaning the children and brothers and paternal uncles of the reigning monarch
- Women
- Officers and members of the armed forces
- Officers and members of the Police and Gendarmerie
- Governors-general and their deputies, heads of government departments, tax officers, heads of the courts of law, prosecutors and prosecuting judges in the area of their appointments and cabinet ministers and their deputies throughout the country. Other government employees may be elected to *Majlis* provided that upon their election, they resign from their post for the duration of their membership
- Political convicts who have risen and acted against the foundation of the national state and the independence of the country

Despite the fact that the force of traditionalism continued, the Constitutional Revolution managed to familiarize the people of Iran with novel political concepts. Ideas such as the rejection of absolute rule, parliamentary sovereignty, political parties, popular participation in the affairs of the state and civil society all appeared prominently amid the set of norms and ideas the architects of the Constitutional Revolution pioneered. In this manner, the Constitutional Revolution was not merely a political change, but also was an all-embracing cultural change of sorts. At the same time there were ambiguities in the wholesale call for change. For instance, the philosophical bases of their argument could not logically deprive women from the right to take part in the political life of the nation. Yet the 1906 constitution restricted the right of succession to the throne to the male descendants of the king, thus marked at the outset by an inequality based on gender division.

At the same time, despite such shortcomings, the legislative process remained marked by an overwhelmingly secular course. The judicial structure in Iran was organized entirely on a secular basis, despite the fact that there was significant resistance.

Even though the 1906 constitution emphasized that Shi'ism would be the official religion of the state,

Article 15 designated the *Majlis* as the primary source of legislation. This is opposed by religious law. Moreover, because of parliamentary supremacy in legislating laws, opportunities arose to revamp previous linkages between religion and the law. The first *Majlis*, for example, took on the contentious question of criminal law. Since Islam contains a vast corpus of laws in this realm, such as the law of *qissas* (law of retribution), law of *diyat* (plural of *diya*, referring to the law which prescribes payment of a sum of money or other things of value in return for the harm caused by a crime), law of *ta'zirat* (plural of *ta'zir*, referring to punishments not specified in religion over which the judge has discretion and may include imprisonment, lashes or fines), and so on, the fundamental question facing the *Majlis* was how to approach these traditional modes of carrying out justice in the Shari'a courts used prior to the Constitutional Revolution.

The modernists, in the meantime, used the opportunity afforded by the idea of parliamentary sovereignty in legislation to draw up a relatively complete and detailed body of laws based upon the civil and criminal codes of France and Belgium. These codes were enacted by the *Majlis* in 1915. In more cases than one, the new criminal laws proved drastically different than their predecessors; offenses such as murder, adultery and theft, which carry particularly harsh punishments in religious laws (e.g., death by stoning, cutting of body parts and so on), were given lighter sentences, while in the prosecution of other offenses and penalties for them, contrary to religious laws, they instituted relevant statutes of limitations.

Later with the passage of the litigation law and criminal code, new definitions of offense and punishment along with different types of judicial discretion were now used to interpret laws. Furthermore, concepts such as democracy, freedom, justice and equality before the law were incorporated into the legal doctrine of the country. By 1973, the few remnants of traditionalism which had been left in the body of the law were amended and bastions of traditionalism were overrun, one after the other.

Among a series of milestones in this process, a number of decisive changes stand out. In 1964, for example, Section 1 of Article 10 of the Electoral Law of 1909, which deprived women—along with people who were insane and minors—of the right to elect their representatives, was amended to allow for women to vote, as was Section Two of Article 13 of the same law, which forbade the election of women to the parliament. Thus, contrary to the views of some prominent clerics who did not tolerate a woman's presence in the political and social arena, such amendments gave women the right to choose and be chosen in parliamentary elections.

In 1965 and 1973, the Family Protection Act and its accompanying amendment were passed. The law gave women greater security within the institution of the family and to some extent liberated them from the hitherto unquestioned right of husbands to divorce, commit polygamy, as well as dominate questions of custody and guardianship. The Family Protection Act could be considered one of the most stunning examples of the victory of increasingly progressive, even modern sentiments over traditionalism. To address family disputes, a special Family Protection Court was set up by order of the Act. Moreover, women received permission to be appointed as ruling judges.

Until the 1979 Islamic Revolution, similar instances of laws with secular overtones can be found in abundance. But the problem was that as soon as such laws were enacted, they came up against clerical opposition and, lacking religious backing, they failed to receive the full support of the population or at least significant sectors of it. In the light of *fatwas* (religious edicts) issued by religious leaders that questioned their legitimacy, these laws were not buttressed by widespread popular support and were often seen as imposed from the top.

In retrospect, the dynamics of the interaction between secular laws and traditionalism embedded in society was rather predictable in the years after the Constitutional Revolution. Every time a law was passed in conformity with the secular sentiments of the ruling elites, it gradually lost its initial force at the hands of an entrenched traditionalism. In some instances, traditionalism came to dominate the process of legislation with

a vengeance. For instance, after the Islamic Revolution, many existing secular laws were repealed. Among the most important was the penal code, which was replaced with an Islamic penal code. Also repealed were laws allowing women to become judges as well as complete sections of the Family Protection Act. With the Islamic Revolution, traditionalist ideas, which prior to the Revolution had been largely removed from the realm of legislative and judicial institutions, took over state ideology, allowing the Shari'a law to regain its former status. Furthermore, allowing women to be solo singers or sent to other countries as diplomats were announced to be against Shari'a.

A crucial question to pose here is why it was relatively easy for the Shari'a legal structure to make a comeback in such dramatic fashion after years of consistent retreat made possible by secular legislation. What was it about the process through which Iran had become modernized and its laws secularized that could not make these secular laws irreversible and lasting? In reference to the roots of this legislative reversal, Zamiran and Ebadi in their book in Persian titled *Tradition and Modernity* (1375.1996: 34) explain:

Our society did not experience an industrial revolution, a French revolution, a renaissance and an appearance of the age of enlightenment. The most exportable products of the Western civilization namely slogans of enlightenment and consumer goods arrived in abundance. But a systematic economic, industrial, and political process did not come to dominate our society. What we received were the superficial and exportable results of modernity, which in turn created deep cleavages in a community containing the conflict between our traditional culture and imported Western manners. The reflection of this crisis can easily be seen in the cultural, political, economic and social challenges facing Iran in this [twentieth] century which finally gave us a confusing mixture of different things.

In other words, Iran's political leaders eagerly adopted the trappings of modernity but its foundations were never absorbed, particularly since at the time of the constitutional revolution, scientific renaissance was not yet widespread in the society. For instance, secular laws were promoted for society but modern limitations on political authority were conveniently ignored, which brings me to the second impediment to popular participation.

## Power-Seeking Royal Court as an Impediment

The second factor impeding effective parliamentary rule in post-constitutional Iran was the existence of royal courts. Resistance to power sharing and a law-based framework that delineates limitations on the exercise of power is not unique to Iran. Perhaps what distinguishes Iran is the intensity and consistency with which popular forces have attempted to place limits on the power and authority of Iran's rulers throughout the twentieth century and, in turn, the consistency of those rulers' resistance to such legal limitations. Constitutional monarchs have repeatedly reverted back to absolute dictatorships, despite revolutions and popular uprisings, while supposed republican leaders have also done the same despite a revolution made in the name of opposition to dictatorship.

In the post-constitutional era we encountered continued attempts by the royal court to dominate the legislative and executive branches of the government—either directly or through its functionaries. With the exception of isolated periods of time, various shahs monopolized authority, operating as all-powerful personalities in the Iranian political scene. In fact, the recent political history of Iran shows a persistent gap in the attempt to wed monarchy and constitutionalism. While constitutional law and revolution gave birth to the idea of a king that reigns but does not rule, the actual course of political events moved in a direction which brought the parliamentary system face to face with the court and its dependents. As a result, constitutional law was emptied of its most essential character, while the absence of an effective system of checks and balances became the most important obstacle to the fulfillment of the objectives of the constitutional movement.

By the time the 1979 Islamic Revolution came around, a mere empty shell of the constitution was left, discrediting it to the point that both the monarchy and the constitution were swept away in a short period to be replaced by a novel mixture of politics and religion, which of course does not mean that during the Pahlavi Era, innovations such as establishment of universities, banks, roads, railroads, development of industry economic growth, public health, and encouragement of women to appear in the work and social arena did not occur.

It was at that juncture that, once again, religious rule came to replace constitutional government in full, ridding Iran of the existence of the constitutional monarchy. Nonetheless, it must be emphasized that before the changes of 1979, a spirit of constitutionalism had survived and found a home for itself. There were instances in modern Iranian history that serve as testament to such a deep-rootedness. The drive to nationalize oil led by former Prime Minister Mohammad Mossadeq in the 1940s and early 1950s was dominant among these manifestations of constitutionalism. The opinion of Fakhreddin Azimi, an Iranian socio-political analyst, who has published books in Persian in Iran, is:

The period 1941 to 1953 occupies a special place in the history of the Iranian people and many Iranian intellectuals look back at this period with nostalgia.... In many respects, the political culture of the nation enjoyed greater maturity and the political awareness of the city dwellers grew immensely. Although for most years of this period, Tehran and many other cities were under martial administration, freedom of expression and the struggle against the ruling elite never faced systematic suppression. Religious forces were not in a position to pose a serious threat to the essentially secular structure of the state. Despite the weakness and vulnerability of the government, the diversity of ideologies and the possibility of political differences, did not lead to chaos and could not shake the integrity of the nation. In particular, during Dr. Mossadeq's administration, even though extensive attempts were made by his opponents to destabilize the government, none led to serious disorder or there was no sign that the country was faced with a threat to its national or territorial integrity. In short, for many Iranians, the conditions in this period could have been a potentially lasting and credible alternative to royal autocracy. ... The way this period ended, namely by the staging of the 1953 *coup d'état* in which foreign powers played a part, led many Iranians to take a tragic view of their history and still many of them have not managed to give up the comparison between what was and what might have been.

Despite the air of nostalgia surrounding the Mossadeq period, some hard realities surrounding the limitations of the Iranian constitutionalism cannot be ignored. The parliamentary system that operated between the end of WWII and the American-backed 1953 coup that brought Mohammad Reza Shah back to power can be described as a period of confusion—a period of dual sovereignty. During this time, the prime minister was squeezed between the parliament and the royal court and without a clear-cut and transparent separation of powers. In the end, he was unable to emerge as an effective leader of the government.

A similar dynamic is at work currently with the return of a mixture of religion and politics that has meant the end of the monarchic-cum-parliamentary system. It seems that the primary impediments to popular participation in the political process have reappeared with the same historical characteristics but in a different guise. Any executive/president, who is not in harmony with the Supreme Leader and his subservient groups can be sandwiched between existing centers of strong and absolute power, and find himself trapped within a complex set of traditionalist forces that are nourished by structural obstacles to development. The essential ambiguity of the Islamic constitution gives the supporters of absolutism the power, through various institutions such as the office of the Supreme Leader, the Guardian Council or even the judiciary, to dictate their own interpretations of the law and prevent people from fully taking part in the political process. In other words, in this first century of the third millennium, like the last century of the second millennium, the guardians of traditional sources of power are at work in maintaining their monopoly over decision-making levers while avoiding responsibility before institutions that provide for checks and balances. During the reform Era, 1997 – 2004, the president, who is the only figure elected by the majority

of the population, was prevented from performing his constitutional duty to protect the civilians' rights. In a system where the Supreme Leader and his subservient groups are not pro-reform, a reformist president such as Khatami seems powerless as he watches his supporters get arrested for engaging in constitutionally guaranteed activities such as mere expressions of opinion or criticism. In this decisive stage in the history of Iran, as in the past, the economic lifelines of the country were under the full control of a group of "insiders" who intend to obstruct any move toward participation. Naturally, they were loath to give up either their economic control or political power. If any other political group obtains the control of the executive branch, the political situation of the country being as it was then under president Khatami, because according to hierarchal political power structure in Iran, reform will never be realized, while the Supreme Leader does not support it.

Even though the present set-up of the Islamic Republic appears to have a division of powers with the existence of executive, legislative and judicial branches, there is virtually no system of checks and balances—hence inhibiting the fruition of democratic vigor.

## Absolutism, Traditionalism, and the Contemporary Situation

Today, as in the past, the traditionalists are propagating the view that political pluralism will lead to anarchy, chaos and deviation from the most basic principles of Islam. In other words, they posit security, stability and their particular interpretation of Islamic principles as counterpoints to political pluralism and democracy. The reformist elites and intellectuals, on the other hand, advanced the idea that we need pluralism in order to safeguard the state itself. They argued that positing of stability/security and pluralism as opposites is erroneous; pointing out that no stable system can be found in the world today without political freedoms and pluralism embedded within. They also rejected the notion that there is in fact a dichotomy between Islam and democracy, arguing that any religion that accepts the notion of free will has embedded in it the principles of choice and freedom in every aspect of social life. Despite experiencing much hardship, intimidation and even violence, these elites and intellectuals continued to argue for political freedoms.

In advancing the idea of the need for change, reformists warned against the de facto practice of dividing citizens into ideological blacks and whites. By depriving a section of the citizens of their civil, political and social rights because they are deemed non-believers in the system, and continuing to promote violence against them, they argued that the Islamic Republic of Iran is effectively practicing a type of ideological and mental apartheid—in blatant contradiction of principles of equality enshrined in the Islamic Republic of Iran (IRI) Constitution. Nevertheless, such violations, enjoying support with centers of official power, are facilitated by certain ideological tendencies and are carried out through violent interpretations of some religious texts. The only way to expose such ideological apartheid is through consistent undermining and destabilizing of the dubious grounds on which such principles are based.

The stakes were enormously high for Iran during the reform period. On the one side stood those who had gradually but very determinedly reached the conclusion that reform is in fact not in opposition to Shari'a law and indeed reflects national aspirations for increased political participation. On the other hand stood those closely interlocked with centers of power who believed that the majority of the people are not able to discern what is good or bad for the populace. They need "guardians" to show them the "virtuous path."

Such an ideological position, standing against a century and a half of popular aspirations, is dangerous for Iran's social stability and can undoubtedly engender deep crises in the coming years—particularly when mixed with the idea that the use of violence in the pursuit of a religious cause is justified. Even more worrisome is the fact that such views are openly promoted through religious pulpits such as the Friday Prayer. The following examples of public speech delivered in the third year of the reformist government,



listed in the Iranian daily newspaper Doran-e Emrouz (10 Shahrivar 1379 – 31 August 2000) are some instances of the active promotion of violence by official or formal institutions:

- “Public opinion results from the interaction of political forces, and it is not a good criterion for policy making or decision making.” (The Friday Prayer leader of Shemiranat in his sermon)
- “Mr. President ... rest assured that the support of the majority of the people is not, at all times and in all places, a sign of legitimacy because our Koran explicitly says that most of them [people] are ignorant.” (Editorial in the conservative Siasat weekly)
- “People are always at risk of being deceived by the political Satan. Was it not true that this very people applauded when Sheikh Fazlollah Nouri was being hanged? ... Today, it is the same situation ... we should not mislead people. In fact, most of the common people have no power of analysis.” (Ali Motahari interviewed by the Kayhan daily)
- “Throughout the ages, people have shown that they lack the power of discernment of their interests.” (Ayatollah Mesbah Yazdi)
- “If we base our argument on the Koranic verse which says people are in command of their property and lives and give people the right to give the guardianship of the state and government to whomsoever they wish and in this way legitimize his rule, our question then is: If one day, people vote for a non-clerical person, such as an engineer or a doctor, to assume the highest position of the state, then is his rule legitimate from the point of view of God and his Prophet?” (Ayatollah Mesbah Yazdi)
- “People may be deceived in different ways and this stems from the ignorance of the people.” (Ayatollah Mesbah Yazdi)
- “When nations come under powerful foreign propaganda or the propaganda of their internal agents, then it will be impossible for the majority of them to discern the correct path.” (Statement of the conservative Mo’talefeh group)

Nonetheless the insistence on the need for people, in all aspects of their lives, to be guarded or shepherded by a body of people who know better because of their religious authority is being contested in Iran today not only by many lay intellectuals but also some leading clerics. Cleric Mohsen Kadivar writes in the Iranian newspaper, Jame’-ye Madani weekly (2000: 4-5), (It is noteworthy that when this article was being written, Mohsen Kadivar was deprived of his teaching position in university by the order of the government of Mahmoud Ahmadinezhad.):

On the whole, I consider the main function of the clergy to be spiritual and moral guidance of the people. Moral leadership of society should not be used as a source of political power. It is possible that we [the clergy] may have all and every political institution in our hands, without feeling the moral pulse of society... Religion must preserve public conscience. Conscience remains with us even in our backrooms. If we succeed in bringing up a religious people so that their religious conscience is always at work, then we will witness no sin, no offense. I mean both legal and religious offenses. What the clergy must try to achieve is the reconstruction of people’s religious conscience. This is a very difficult task. Of course, I believe that directing public conscience by resorting to legal and legislative instruments was the way that the Christian clergy followed, which finally led to inquisition and secularism. We should not make the same mistake.

Mr. Kadivar goes on to say that among the clergy, there are still those who have kept and still enjoy public confidence:

There is a group of clergy who we may call enlightened and reformist. This group has been able to avoid being tainted by the damages, which are inevitable in the area of political action while still following religious instructions. It seems that this group of clergy has still maintained its social influence ... The election of Mr. Khatami in the seventh presidential elections and the vast popular support he enjoyed, is a proof of the fact that despite all the defects and problems, the people’s

choice still is a cleric. Of course Mr. Khatami comes from the ranks of enlightened and reformist clerics and people's votes, as some have tried to explain, did not mean the rejection of the clergy but it implied support for a particular interpretation of religion and Islam.

During the reformist government, since such religious/political debate was promoted, the conclusion was drawn that the current intense debate surrounding reform of the political system as well as religious institutions and values suggests that this is a crucial and sensitive stage in the history of the country. While the preservation of traditional values is of great import, such preservation does not have to come at the cost of a stagnant, archaic political system. Without a constant revisiting of existing norms, political and beyond, the Iranian system is destined for destruction. Such a system will finally collapse if it does not show the necessary flexibility and adaptability to respond to pressures for change. Naturally one hopes that reform and the ultimate restructuring of the political system takes place in a peaceful manner, saving the people of Iran from the trials and tribulations of further explosion and revolution.

Unfortunately, opposition to reform was fast ascendant. Nevertheless, the more that opponents of reform pay no heed to public opinion and continue to resort to violence and insist on using the heavy hand of the state so that no one dares to breathe, the louder the people's voice become. The history of twentieth century Iran has taught us this much and can doubtless be repeated in the 21st century. In this way, the opponents of reforms were playing with fire. More importantly, such opponents set the stage for yet another moment of lost opportunities for a generation of Iranians. They can rest assured that future generations will not forgive them.

It is evident to all the conditions in which the reform era ended. For whatever reason, the reformists were not able to sustain the content of those who voted for them in an unremarkable fashion. At the end of the eight-year period of Khatami's presidency, those who voted for him were completely disillusioned and hence, in the presidential election of 1384 (2005), a large number of Iranian population refused to participate in the election. Some others voted for Mr. Mahmoud Ahmadinejad based on his economic promises. Presently, all those promises have frittered away and the protectors of reform in Iran have been sacrificed because of it.

## Chapter Two: Freedom and Political Development

The leaders of Iran's reformist movement, emphasizing freedom as one of the three basic principles of the Islamic Revolution of 1979 (the other two being national sovereignty and an Islamic republic), underlined the need for the promotion of democratic institutions within the framework of the Islamic Republic's constitution. Reformists advanced the idea that meaningful political reform, expressed as "political development" (*tose'eye siasi*) in contemporary Iranian political discourse, is only realized when individual and social freedoms and rights of people are met. When people are allowed to take part in the process of decision making and setting the future course of their society, obstacles facing the formation of political parties and organizations and professional and cultural formations are removed, freedom of thought, expression and publication are recognized, the doors of the parliament and municipal councils are open to all citizens and information is disseminated without censorship and misrepresentation. In short, the rule of law is established and a particular group or class of people no longer monopolizes the state—whether in the realm of legislation to courts or in the execution and supervision of laws.

Without a doubt, political development requires a respect for freedom on the part of the rulers. The paramount question, however, is this: If the rulers themselves are not elected in an environment which guarantees the aforementioned rights and freedoms, can they possibly act to promote them? This is the fundamental question we face in contemporary Iran. There is little doubt that at the level of ideas, the nation and many of its leaders have gradually acknowledged the importance of political development—at least in principle. Increasingly, the language of political development is used in political discourse, even when the rulers have not been elected under wholly democratic conditions. The very notion of political development and reform has itself become such a potent force that it may finally get playing time instead of mere lip service. At the same time, the situation remains volatile precisely because Iran is in transition from a stage in which ideas about political development are being hotly debated to a stage in which these ideas could be realized. It was understood at the time that a radical change can occur and cause a reversal to more authoritarian ways, and it happened. For this reversal to have been avoided, we should have built upon achievements, even if in a piecemeal fashion, and created new laws and finally set the ground for their acceptance and perpetuation with a better language than the one used by the reformists.

With regard to the ideal of freedom, two primary questions will determine the fate of the transitional period: First, how has the principle of freedom been incorporated within the corpus of legislated laws? Second, how has this principle fared in the process of policy implementation after the Islamic Revolution? These questions are constantly raised because in the process of instituting reform and bringing about change, the inadequacies of the existing system invariably come to the fore. This has been particularly the case in the aftermath of the Islamic Revolution.

It is no exaggeration to say that after the Revolution, the political managers of the country began to govern as if they had assumed power through invasion. As such, they maintained their rule in the spirit of conquest and through oppression. Naturally, the management of a conquered land is different from the management of a country in transition; the assumption of power through conquest is the most primitive form of ascendance to power. In the period of transition, on the other hand, questions regarding the manner in which freedom is defined in the new Islamic Republic have risen.

### Definition of Freedom

Freedom means the possibility of choice. If a person is able to implement every decision he or she makes with no restriction, that person enjoys a freedom without limits. However, since human beings live in societies, they can never have unfettered freedom, for this would imply trampling upon the freedom of

others. For this reason, every society has a set of social, political and economic rules and regulations that both determine the boundaries of individual freedom and guarantee permissible freedoms. The same principle applies at the global level, where international norms and regulations set boundaries upon the freedom of nations.

At the same time, one of the most significant concerns of humankind throughout history has been the desire to achieve defined liberties for the individual, restraining the boundless discretion of their oppressive rulers.

The most important types of liberties mentioned in the conditional laws of most countries and their international declarations include individual, social, political and economic freedoms. In Iran, the nominal defense of freedom has a long pedigree. The Iranian civil code, which was passed about eighty years ago, emphasized human freedom and dignity in articles 959 and 960. According to Article 959, "No person is allowed to deprive himself of the right to enjoy or the right to apply his civil rights in whole or in part." Article 960 reads, "No person can deprive himself of the right of freedom or give up the right to enjoy his freedom within the limits which are set by laws or good ethic.

The constitution of the Islamic Republic of Iran also refers to the need to respect the rights of the people and their freedom in several sections, while limiting these rights and freedoms in conformity with religious criteria. Chapter three of the constitution, under the title of 'The People's Rights,' describes what is meant by "freedom." Here are some of the rights presumably guaranteed by the current Iranian constitution:

Article 22. The dignity, life, property, rights, homes and employment of persons are inviolable unless where laws allow.

Article 23. Inquisition is not allowed and no one can be prosecuted merely for holding an idea.

Article 24. The press and publications are free to publish materials unless they are harmful to the Islamic precepts or public rights. These are described by law.

Article 25. Inspecting and intercepting letters, or recording and publishing telephone conversations, or revealing the contents of telegrams and telex messages, censoring and not delivering them, eavesdropping and any kind of spying are prohibited unless authorized by law.

Article 26. Political and professional parties, groups, associations and Islamic associations or associations of recognized religious minorities are allowed, provided that they do not undermine the principles of independence, freedom and national integrity, Islamic tents and the foundation of the Islamic republic. No one can be prevented from entering these associations and no one can be forced to join them.

Article 27. Gatherings and demonstrations, without carrying arms, are allowed provided that they do not harm the tents of Islam and public interest and rights of others.

Article 28. Every individual has the right to choose his/her own occupation provided that the activity is not against Islam and public interest and the rights of others. The state is obliged to give all individuals equal opportunity to enter into various occupations in the light of societal needs for various types of employment.

Article 30. The state is obliged to provide without charge every member of the nation with facilities to continue his/her education to the end of the intermediate level and expand higher education facilities to the extent necessitated by the needs of the country to achieve self-sufficiency.

Article 32. No one can be arrested unless on the basis of the rules and regulations which are specified

in law. Upon arrest, the accused should be informed of the charges against him/her in writing and understand them and the case should be sent to competent legal authorities within twenty-four hours of the person being charged. The case must be heard by the court as soon as possible. Failure to comply with these provisions results in punishment to be decided by law.

Article 33: No person may be exiled from his/her place of residence or be prevented from residing in the location of his/her choice unless in cases specified by law.

Article 34. Every individual has the right to have access to competent courts in order to have his/her rights defended and all members of the nation have the right of access to such courts and no one can be prevented from resorting to the court which the law has made available for redress.

Article 37. Innocence is the principle and no one is legally found guilty unless his/her guilt has been proven in a competent court.

Article 40. No person is allowed to harm others or damage public interest with the pretext of enforcing his/her own rights.

Article 41. Citizenship of Iran is the inalienable right of every Iranian citizen and the state is not allowed to deprive an Iranian of his/her right of citizenship unless upon his/her own request or in case he/she adopts the citizenship of another state.

Despite these explicit guarantees, there are many laws found within the current legal structure of the Islamic Republic that are in conflict with the principle of ensuring individual, social, political and economic liberties. These laws are the most important obstacles to political development and participation, while insufficient legal and legislative expertise in the process of legislating laws creates a lack of compounds their effects. In fact, many articles of the Iranian constitution guaranteeing specific liberties suffer from ambiguity. The absence of clear and transparent definitions also does not help. As a result, articles of the constitution that deal with guarantees of freedom are often restricted by various conditions and provisions. For instance, Article 9 of the constitution reads, “in the Islamic Republic of Iran, the principles of freedom, independence and unity and territorial integrity of the country are inseparable and both the government and the people are charged with the duty to maintain them. No individual or authority has the right to damage Iran’s political, cultural, economic and military independence or its territorial integrity in the name of freedom and no person or authority has the right to suppress legitimate freedoms in the name of maintaining the national independence and territorial integrity even through legislating laws and regulations.” This Article, which supports legitimate freedoms to the extent that it does not even allow the legislative process to restrict these freedoms through legislation, contains an ambiguity regarding the definition of what is legitimate and what is not. Consequently, the authorities have a free hand in interpreting the Article as they wish by declaring that a particular type of freedom is not legitimate (or religiously allowed).

Article 24 addresses the question of freedom of expression within the context of press freedom and state: “publications and the press are free to express their ideas unless these contravene the precepts of Islam or harm public rights. These conditions will be defined by laws.” Here, despite the emphasis on freedom, there is again a conditional provision particularly because the precepts of Islam and public rights are not clearly defined by legislated laws. Thus, authorities that are against the principle of freedom may use instruments to interpret the Article in support of their own political and factional interests. In one instance, the conflict among various centers of power in interpreting this article reached such extreme tensions that the issue found its way into the media. According to the *Khordad* daily (1378-1998), Ayatollah Mohammad Yazdi, the then head of the judiciary, used the Friday prayers pulpit to explain what he meant by the freedom of the press:

Our Constitution tells us that the press are free to write provided that they do not harm the Islamic

tenets and public interpret, otherwise, they are not free and they do not have the right [to publish their views]. Now, if a newspaper owner is summoned to the court, others raise a hue and cry that everything is lost. Our law tells us that they do not have the right to undermine the tenets of Islam. You ask what is Islam? Is it the ministry of Islamic guidance? Can the ministry explain what the Islamic tenets are? No, it is not qualified for this task.

As a result of the absence of a specific and consistent definition of the terms “religious precepts” and “public rights,” freedom of the press is placed in danger. The defendant in a press case does not know beforehand what may constitute harm to the tenets of Islam and public interest. In fact, the defendant has no way of knowing that his work is in conflict with these requirements until the moment he is summoned to court. In such a situation, how can a court of law determine his criminal intention, a necessary requirement for conviction? Perhaps there is an even more fundamental question: are the contemporary press trials legal when they are held in the absence of a known and recognized definition of the Islamic tenets and public interest? Don’t these trials contravene the principle of “innocent until proven guilty” and other provisions in defense of the rights of the defendant foreseen in the constitution? In the end, the complete absence of a transparent legal system has been an important obstacle to freedom of expression in Iran.

There are many other instances of ambiguity. Article 175 of the constitution provides for freedom of expression on the state radio and television, again constrained by the usual provisions. “The Islamic Republic of Iran Radio and Television should support freedom of expression and exchange of ideas while upholding religious criteria and the interests of the country.” And again we must remember that ‘religious criteria’ and ‘the interests of the country’ are not defined.

On the whole, even though Articles 9, 24, and 75 guarantee freedom of expression, they also contain vague restrictions on freedom. Citizens have no means of knowing what these restrictions actually mean. As a result, people often find themselves in limbo between freedom and oppression and may even face trial without any prior knowledge or intention to act against the law.

Another instance in which extraordinary ambiguity is encountered is article 6 of section four of the Press Act of 1985—which also repeats the content of article 24 of the constitution in nine sections. Even though article 6 claims that actions that constitute harm to Islamic precepts and rules and public rights are specified in the nine sections, the first section, which emphasizes that the publication of materials which are contrary to Islamic criteria prohibited, and section 7 which warns about insulting what is sacred, fail to provide any definition of what the Islamic criteria are and what is sacred. Such definitions are not given in any other laws.

In the amendment to the press law, which was put before the parliament in 2000, the absence of definitions of terms such as Islamic tenets, precepts and criteria as well as sacred things persists. Besides, this new act embodies a despotic addition to the previous press law. Enacted by the fifth legislative *Majlis*, which was controlled by anti-reform elements, the law now holds publishers directly responsible for any article published that is determined to be undermining religious values—once again without any clear definition of those values.

## Conclusion

The legislative organ of the Islamic Republic of Iran, which according to section 7 of Article 3 of the constitution is empowered to safeguard political and social freedoms within the law, has thus far failed to move in the direction of providing a clear definition of such ambiguous and vague phrases as tenets and precepts of Islam, public rights, legitimate freedoms, religious criteria and the national interest. As a result, those who are active in political and cultural arenas are left without any guidelines about what constitutes

legitimate limits to public acts—invariably leading to punitive legal actions against people who in fact thought they were acting within the bounds of the law, as well as much self-censorship on the part of artists and writers who do not know when their actions will elicit a state response.

However, it must be emphasized that being in limbo is not the fate of merely this generation of artists and writers, but has its roots in the history of legislation in Iran. At various moments in history, religious authorities have emphasized the need for the conformity of cultural works to religious ideas, and this emphasis has been persistent. The present situation, additionally, must be understood in the context of the historical course of legislation since the Constitutional Revolution of 1906. As mentioned before, traditionalist tendencies, autocracy and suppression of freedom have always existed in Iran. Even the 1997 reform movement had focused primarily on the unlawful activities of those in power and the inadequate implementation of laws without paying sufficient attention to the inadequacies of existing legislation frameworks at large. Herein is a serious defect, as the process of reform has two sides: Reform of the way laws are implemented and reform of laws that impede development in the first place. The second need is a particularly pressing one as better laws mean that the public will respect laws not just because they are enforced, but because they safeguard citizens' rights and freedom. Unfortunately, the reform movement was not even able to scrutinize the legislative defects in full. In fact, limiting its attention disproportionately to the mode of implementation of laws in dealing with important political and press cases, the reformist government (1997-2005) was restricted in its action, failing to address laws that affect the lives of ordinary citizens in fundamental ways. In the end, the continued inattention to the reform of laws certainly undermined the popularity of the reform government.

## Post-Revolutionary Reinstallation of Censorship

The continuation of the process of reform in contemporary Iran depends on finding a space for criticism in the country's new political culture. Critical thinking has been the cornerstone of modernity. As such, a fundamental priority for cultural life of Iran remains the acceptance of a healthy tradition of criticism. For a nation with little official appreciation for such tradition, however, achieving this end is neither easy nor without conflicts.

The fight against suppression of ideas and censorship was among the main concerns of the uprising that led to the 1979 revolution. In the course of the revolutionary months that led to the fall of the monarchy, the pre-revolutionary censorship apparatus lost its vehemence and withdrew from public life. The freedom of publication, which had come about several months prior to the Islamic revolution, continued for a couple of years. Then, in 1981, a reversal began and the system of post-revolutionary censorship as we know it today came into being.

In 1981, when the Islamic Republic was both involved in conflict with opponents at home and embroiled in a war with Iraq, the government ordered the withdrawal of books containing the ideas of groups who opposed the Islamic regime. Such books had found their way to bookshops in the open political air of the revolutionary months. From then on, censorship assumed a form that was tied to the conditions of the wartime economy. Publication of any book was dependent on the supply of paper, which was in turn authorized solely by the Ministry of Culture and Islamic Guidance. At that stage, the publisher or author had to submit the text of the book to one of the departments of the ministry and wait between three to six months to gain approval of the content—or not. If approved, the ministry would authorize the supply of print paper; otherwise it would be impossible to publish the book. Even publishers who were in line with the ideologies of the authorities were not able to publish more than one or two titles a year. This type of censorship also applied to newspapers and magazines, with the difference that if a paper followed a line that did not conform to the official taste or tried to act as a tribune for people whose ideas differed from those of

the authorities in any field, it faced a reduction in its newsprint quota (for instance to half) or, alternatively, a complete stoppage of official supply.

As a result, the only way for the print media to survive was to abide by governmental directives and print only the materials written by “insider” (*khodi*) authors. The procedure for gaining permission to continue the publication of a newspaper or magazine was also interesting. A newspaper or magazine had to apply for paper for each individual issue and the authorities made decisions on the basis of contents. If the contents of previous issues, which had somehow escaped inspection, displeased the authorities, the publication would face a reduction in future paper quota. During these years, the country witnessed the closure of magazines such as the *Ayandegan*, which had a large readership and reflected a diversity of ideas. Other magazines and newspapers airing the views of any political group and party, even pro-revolutionary ones, which were at variance with the views of those who had come to dominate the government were closed one after the other and their publishers or distributors were punished by the order of revolutionary prosecutors. Included in the list of closed papers were *Mardom*, belonging to the Iranian Tudeh (communist) party, and *Enghelab-e Eslami*, which belonged to the first president of the Islamic Republic Bani Sadr before he was banished from power. What remained were a number of state-owned newspapers such as *Kayhan* and *Ettela’at*, and *Jomhuri Eslami*, which was the organ of the Islamic Republican Party—the only political party allowed to operate at the time. Bearing in mind the fact that the Islamic Republic’s radio and television are wholly under state monopoly, it can be said that during this period of war, the media in Iran followed only the views and ideas of the state. Not surprisingly, this kind of censorship impeded freedom of thought in Iran and proved an obstacle to the realization of the rights of citizenship. Those who refused to adopt self-censorship were driven out of the public sphere.

This wartime censorship system continued to the end of the war in 1987, though the end of the war did not mark an end to censorship. In fact, the censor system fell into the hands of a group of people who were not as fundamental as those during the war time, some of whom were bent on the elimination of those identified as “liberals” or free thinkers whose ideas did not conform fully to those of the state. This group of powerful people pursued the objective of removing independent thought from the cultural and political arena. When the war ended, the previous restrictions on the import and distribution of paper could no longer be justified. The role of the Ministry of Culture and Islamic Guidance was re-defined on paper as simply issuing guidance rather than controlling the media. It seemed that the situation was moving in the right direction though soon thereafter, different signs appeared on the horizon. A number of books were confiscated, the bookshop *Morgh-e Amin* was set afire by Islamic vigilantes, and the well-known female writer *Shahrnush Parsipur* was arrested for her book *Women without Men*.

Interestingly, until this time in the history of the Islamic Republic, there was no specific legal directive that detailed what could and what could not be published. But in 1987, the Supreme Council of the Cultural Revolution issued a directive to publishers as a means of bringing back systematic censorship. The directive contained a list of rules that publishers were now obliged to follow. Despite this fundamental change, many experts believe that the directive does not in itself constitute a legal foundation for control and censorship of books before they are published because no such laws have been legislated so far. Thus, the decision of the Ministry of Culture and Islamic Guidance to set up a special book control section to decide on the contents of books was, strictly speaking, illegal.

With the birth of the reform movement the situation changed somewhat, though not necessarily always in the direction of greater freedom of expression. Since 1997, the Ministry of Culture and Islamic Guidance was less of a force in preventing books, newspapers, and journals from being published. In fact, the ministry issued many more licenses for newspapers and magazines. All the same, freedom of expression in the publishing sector remained quite restricted due to the increased activism of the judiciary, now fully controlled by opponents of reform under president Ahmadinejad. This is why in some instances press and



political offenses, which according to the constitution must be tried in ordinary courts and before a jury, have been brought before Revolutionary Courts or the Special Court for Clergy. In many of these cases, the offenders have been tried and sentenced in camera without a jury. The Revolutionary Courts have taken it upon themselves to prosecute the press for allegations such as insulting the sacred, propagation of ideas against the Islamic Republic, or creation of mistrust in the public mind.

Such an approach to the intellectual and political aspects of life in Iran has had serious consequences, including the suspension or withdrawal of publication licenses. The number of newspapers and magazines that have met such a fate since 1999, otherwise known as the reform period, are quite considerable. Many editors, license holders and writers have been put in prison, let out on hefty bails, to finally receive heavy prison sentences. The situation is further complicated by the fact that the Ministry of Culture and Islamic Guidance no longer investigates the press before publication and it is upon the appearance of the newspaper or the magazine that the iron fist of censorship comes down via the judiciary. The result is that those active in the publishing world must work under constant fear and, if failing to enforce strict self-censorship, face trial and punishment. Presently, a few reformists are successful in surviving in the reformist press, parties and NGOs, yet they face detention and unfair trials, and in general lack judicial security. Of course in comparison to the seculars, the reformists fare much better since the seculars don't even have the smallest legal opportunity for organizing and expressing their political opinion.

Further, those in the media who tried to use unofficial channels of communication to inform society were subject to assaults by so-called pressure groups, collections of individuals devoted to the elimination of cultural activities, and at times, physical removal of individuals holding unorthodox viewpoints. Even though these groups did not operate in a clandestine manner, the legal authorities refused to deal with them or prevent their violent activities against persons they deemed to be opponents of the Islamic Republic. As a result, the belief that they were under the financial and legal protection of persons in authority gained currency. Currently, fundamentalist president Mahmoud Ahmadinejad, who aims to uproot all the achievements of the reformists government and in particular suffocate the weak civil society, granted the Minister of Islamic Culture and Guidance of his cabinet, Mr. Saffar-Harandi, extensive control to intensify censorship in the fields of press, publication, cinema and theater and on whole the entire creative realm that requires freedom of speech for its growth. A similar role is also given to his Minister of Interior, Mr. Pourmohammadi, to crush any form of peaceful gathering and unleash the police force under the order of the Ministry of Interior on the peacefully demonstrating workers, women, youth, and others. With the same goal, the Minister of Science and the Minister of Intelligence of Ahmadinejad's government, simultaneously crushed students active in the student run press as well as any forms of academic freedom. Their main goal is to once and for all destroy the young sprout of reformism that has not yet come to fruition. Of course they will not succeed and new faces will emerge from within these oppressions to exert change on the political situation of the country. Young leaders will surface to accomplish great changes.

The ideology of these groups is not difficult to describe. They voice an opposition to individual and social freedom, hatred of democracy, rejection of any system of checks and balances to control top-ranking authorities, opposition to the whole notion of human rights, and opposition to *détente* in foreign policy. The combination of their influence in the political process and the continued activities of the judiciary against the press has led to the commonly held belief among writers and journalists that, "in present day Iran, there is freedom of expression but not freedom after expression."

As mentioned above, the survival and even growth of these groups was made possible by non-transparent support from elements within the ruling circles, allowing them to act with impunity. From the time election of President Khatami, they were most active against the Minister of Culture and Islamic Guidance. The minister (Atta Ullah Mohajerani) was able to bring major changes to the attitudes and policies of that ministry. Among his achievements was the appointment of more lenient censor officers willing to grant

licenses to books, films, and other cultural products that were previously banned. But throughout his term of office at the ministry, he was never free from the pressure exerted by groups within and without the formal state apparatus. He faced and survived a vote of no confidence by the Fifth *Majlis* in 1999, but was finally forced to resign in the winter of 2000. His resignation and the fact that the president accepted it, was a clear manifestation of the power of the pressure groups.

These groups, who are ruling the government now, were intolerant of any change in the cultural environment of the country. They were devoted to anachronistic prejudices and as soon as they felt the environment was permitting the presence of fresh and creative minds, they found their own survival at risk. Behruz Afkhami, a filmmaker who entered the Sixth *Majlis* (reformist parliament between the years 2000 – 2004) on a reformist ticket, spoke about the impact of pressure groups in a parliamentary speech on 30 December 2000. The speech is an important one and parts of it are worth quoting in order to understand the general cultural atmosphere in Iran as impacted by the activities of pressure groups:

Even though during last year, the activities of the Ministry of Culture and Guidance included a series of passive retreats in the area of cultural reforms, we must admit that the resignation of the minister was a great victory for the pressure groups and self-willed circles which during the past ten years have been compelling our leaders and decision makers in the government to put the maximum pressure on the life and activities of artists, intellectuals and any one concerned with the cultural life of the people... Ten years ago (when the last national census was taken), we had a population of about 55 million people of whom 25 million were aged under 15 and 40 million were under 30 years. We have one of the youngest populations in the world whose free time amounts to 600 million hours a day and 220 million hours a year. ... Meanwhile, there were talks of the arrival of the satellite receiver, compact disks and Internet and it was obvious that America was preparing for a global assault to capture the free times of everyone in the world. ... We knew that to resist the conquest of the cultural field of Iran by America, it is necessary to create the essential legal, economic and industrial infrastructure to support the growth and development of cultural and artistic products. We knew that censorship should be minimized and should be regulated in order to persuade artists and creators of cultural works to produce quality products. We knew that we needed the production of over 200 films a year and construction of over 2000 cinemas in the country and 10 thousand shops to sell film, cassette tapes and video products. We were aware that if we were not going to leave the free time of our people to the Americans, we needed more than one hundred radio and television stations at the local, provincial, national and even international levels or have to use satellites broadcasting their materials in different languages for different tastes and should even address the Iranians in exile. We knew that we needed one hundred newspapers with circulations of three million copies; we needed 30 thousand new book titles a year and all to preserve the cultural status of the Islamic system... But ten years ago, we also witnessed the first written and mental manifestations of another group, which also made a claim to the leadership of the struggle against cultural invasion. They used simpler methods to achieve their objectives, meaning that when necessary, they resorted to the police and the courts and punishments, and whenever these methods were not available, they concealed the clear signs of the cultural aggression under the carpet or hid their heads in snow. They were also suspicious about any person of intellect and culture except themselves ..., and by closely watching artists and people active in the fields of culture; they sought to find signs of cultural aggression. They put the professional record, private and family lives of everyone under scrutiny and delved into the files of their friends until they finally found some recriminating evidence. What they never needed was law and order and security of investment for the expansion of the cultural and artistic infrastructure of the country; they did not mind if the remaining few cinemas of the country were left empty and the number of book copies in a country of 55 million people fell to the shameful low of 300,000. Thus, confronting cultural invasion progressed rapidly and, with the intervention of more extremist elements, rose to a new height with the physical elimination of opposing artists and intellectuals.

As a result of the stresses endured by cultural producers of Iran over the past ten years, their professional, social, and even physical existence has been at serious risk. Fortunately, opposition to freedom of thought

in general and freedom of press in particular is not a commonly held position by all members of the Iranian state. As mentioned above, after the presidential elections of 1997, President Khatami appointed a number of his colleagues with similar views to run the important ministries of Culture and Islamic Guidance and Interior. Even though these key personnel changes did not end censorship and merely modified it in practice, the censor officials moderated their methods and issued publication permits for a number of books that had been banned or simply left in limbo. The censorship section of the Ministry of Guidance continued to enforce its decisions by telling publishers or authors to remove unacceptable parts of books, but even with this limited freedom, the cultural environment of the country, especially in the areas of book and newspaper publication as well as film making and other arts, though still not ideal, experienced an improvement during the reform era.

But in response to such openings, the opponents of freedom that controlled the fifth *Majlis* (conservative parliament) moved quickly to pass an amendment to the press laws in 2000. This draconian press law, rather than reflecting the more liberal mood of the country at the time, was intended to block it, carrying a clear message affirming despotism and authoritarianism. This new law sealed off any space for dissemination of information by the press while opening up every gate for the propagation of official views. One immediate result of the law was the closure of many newspapers and magazines. It seems that rather than allowing the press to come of age in this transitional period—through a process of trial and error—the government closed down its voice categorically.

If given the space for trial and error, various professional entities will come into being and the security of the media may gradually return. Unfortunately, the amendment to the press law put a rude stop to this process. The despotic practices against the press, which had prompted the call for freedom during the revolution of 1979, have again appeared in full via this new law with the objective of eliminating ideas that are deviant in the public sphere. A closer look at the changes shows this objective in an unequivocal way.

The most blatant of the changes is the direct attack against the survival of any given publication. Indeed the new law foresees numerous instances in which the press supervision board or a court of law is given permission to stop the publication of newspapers and magazines even before trial. This effectively undermines any possibility of press security. Of course, if an offense is committed, the law can delineate punishments, though the threat of closure without open trial goes directly against Article 168 of the constitution, which explicitly states that press offenses must be dealt with in open courts and in the presence of a jury. Furthermore, this new law allows the courts to enforce a temporary or life-long ban on authors. It also allows the press court the right to ignore the opinion of the jury and make decisions as it wishes. It also gives the Supreme National Security Council the right to enforce censorship and control over the press an unprecedented move. The logic motivating the architects of this bill was that the press law of 1985 had given too much freedom to the press, hence preventing the conservative elements from dealing with the press as they wished. The previous law, which in many cases was ignored, did not allow for the criminal prosecution of writers and publishers and did not allow for a full ban on the press. With the new law, opponents of press freedom can no longer be accused of acting against the laws of the land, even if they are blatantly acting against the constitution!

The new law not only undermines the legal but also the employment security of those active in the print media and, in this way, deprives a group of citizens who have no criminal record from such inalienable rights as choosing their own employment. For instance, Note 8 of Article 9 of the law states that “members and sympathizers of ... illegal political groups ... have no right to enter press activities or accept a position in the press.” Clearly, this section not only contravenes freedom of employment, but also contains a host of ambiguities. How is the membership in and sympathy for illegal groups ascertained? Can sympathy with an illegal group constitute an offense? Isn't such an attitude toward a citizenry a type of inquisition, while in Article 23 of the constitution, it is clearly stated that “inquisition is prohibited and no one can be prosecuted

for merely holding an idea”? Is it not against Article 27, which states “every person has the right to choose the employment of his/her choice provided that it is not against Islam and public interest and the rights of others” and against Article 37 which declares “innocence is the principle and no one is legally guilty until his/her guilt is proven in a court of law”?

The law contains other legal ambiguities. For instance, it states that applicants for newspaper or magazine licenses must have “practical devotion” (*eltezam-e amali*) to the constitution of the Islamic Republic. Now the question is how can this qualification be ascertained? What is the applicant supposed to do to prove his devotion? Does this mean the need for inquisition and prying into the minds of the people? Such ambiguities allow those who are against the freedom of the press to interpret the law and impose their will on the press and, in doing so, drive out their political opponents from the public arena.

The problems of the law do not stop in the legal realm. There are also social and political issues at hand. It is a fact that the Iranian society has made giant strides in terms of education of its public and immigration from the countryside to the cities. Iran is now a largely urban country with a highly educated population. Moreover, the population of the country is very young and constantly in search of information—both about Iran and the world at large. If domestic media does not meet this need, they will certainly turn to international channels for information. The result will be a lack of public confidence in the domestic information industry. This particular lack of confidence also feeds into a general lack of confidence and trust in the Islamic system as a whole and will serve as an incentive to break the law.

Most importantly, the amendment is open to criticism on the basis of the need for political development. Restricting access to information means impeding the process of the growth of critical thinking in society. Not only does anyone who wishes to enter the profession of writing for the press have to be selected beforehand (hence violating the rights of the citizens in choosing their job), but society is also deprived of the right to access information. Since the law leaves every individual who works in the press open to prosecution and the possibility of arrest, trial and punishment, the professional journalist has to work much like a government employee. He or she is prevented from creative, investigative and professional journalism. The press faces total restriction under this law. The question is why?

Clearly the new amendment is aimed at intensifying censorship. But what are the topics that authorities feel is an anathema that should be banned categorically from the public discourse? In a society like Iran where issues relating to women, minorities and free thinkers are among key social problems, censorship has turned their discussion into taboos. It has created red lines in dealing with many important questions; lines that no one is allowed to cross.

A case in point is feminism, which is a serious red line. People who wish to discuss the problems of women have internalized a defense system of sorts. Before they say a word, they emphasize that they are in fact “not feminists.” This position is adopted to avoid the consequences befallen women who are known to be feminists. The discussion of the legal and social condition of Iranian women inevitably involves religious and canonical questions. According to several articles of the constitution, all laws and regulations must conform to religious rules and if they do not they are invalidated. For this reason, those who are active in support of the rights of women in any area are obliged to move with extreme caution in discussing the legal status of the Iranian woman. If they cross existing boundaries, they face with charges of insulting religion, apostasy or actions against national security and must be prepared to face the severe penalties meted out to true offenders.

Similar constraints exist in the area of dealing with the question of the rights of minorities. Even the discussion of the rights of recognized religious minorities, namely Jews, Christians, and Zoroastrians is dangerous enough, let alone those of minorities such as the Baha’is which, for the fear of the consequences, are not

even referred to in the media. The press faces strict boundaries in discussing the problem of non-Muslim minorities and free thinkers. Those who approach the red lines almost inevitably face threat, persecution, and imprisonment.

Iran is a member of many international conventions and is obliged to recognize the equality of citizens irrespective of gender, religion, opinion, color and race. But supporting human rights in the Islamic Republic of Iran is not an easy task, and often involves crossing certain “red lines.” The state holds that an “Islamic code of human rights” exists which is quite distinct from the universal declaration. In the meantime, precious few have the right to discuss human rights in full or speak about the conditions of women, minorities, and free thinkers. Any criticism entails arrest, imprisonment, and severe punishment. Even if a writer somehow escapes such a fate, the conservative press and bulletins will not fail to hurl insults. The writer will face serious threats to his or her personal dignity and even life.

Another new red line, which has recently assumed a heavier shade, is the discussion of the conditions of political and press defendants. A number of defense lawyers have been sent to prison for the mere discussion of their defendants’ cases in public. Exposure of the activities of the state in the physical elimination of free thinkers has also led to serious punishments.

Censorship, too, impedes the discussion of some of the most pressing issues of the day in our society. For this reason, the Sixth *Majlis*, which convened in the spring of 2000 with the reformists in the majority, tried to revise the amendment to the press law in order to reduce censorship. The *Majlis* voted to debate a new amendment, but on the day it was supposed to open the motion, a letter was sent to the deputies by the Supreme Leader of the IRI. In it, the Leader ordered the parliament to avoid revising the law.

## Chapter Three: Security and Equality

Judicial security and social equality are two prerequisites of any social or political development. The rights and duties of citizens are defined in the context of legislation and laws, while the relationship between the citizen and the state is a mutual one and must be upheld by both sides. In the modern world, the citizen's confidence in the state is secured only if his or her capabilities and aspirations are encouraged and the individual citizen is convinced of equal rights with others. It is only then that the state is accepted or perceived as the most reliable protector of the citizen's legal rights.

Mutual respect between the citizen and the state also depends on the clarity of the citizen's rights in the laws, along with the willingness and ability of the authorities to implement these laws. Therefore, for the citizen to feel secure, it is not only necessary to have laws based on equality, it is essential for the institutions responsible for the application of the laws and safeguarding the security and equality of citizens to carry out their mandated responsibilities.

The judiciary plays a crucial part in strengthening the relationship between the citizen and the state. Likewise, the judiciary can play a crucial role in undermining the relationship. The process of carrying out justice is one of the most important variables in creating the feeling of security in a given society. The quality of justice can improve the sense of well-being in a society or impede it. Litigation procedures are usually set in as well as regulations, requiring judicial authorities to remain independent and avoid involvement in any power struggle.

Though the judiciary claims independence in present-day Iran, it has largely taken on a political role by taking sides with those factions of the ruling strata largely opposed to citizens' freedom. I will deal with the judicial structure in a later chapter. For now I will deal with existing laws, which are discriminatory in nature and do not respect the equality of all citizens.

### Discriminatory Laws

The protection of the life, property and individual and social dignity of citizens is all but absent in Iran's body of law. Women, non-Muslims, and independent thinkers are among the citizens who are not afforded equal rights with others. For instance, the following items indicate the discriminatory nature of the laws as they apply to women:

- Until very recently, according to Note 1 Article 1210 of the Civil Code on female age of marriage, girls were considered majors upon reaching the end of their ninth lunar year of life, while boys are major after the end of the fifteenth year. Since the legislature allows mature male and females to marry (Article 1401 of the Civil Code), it could have been said that in the Islamic Republic of Iran, it was until recently, possible to marry a nine-year-old girl to any man over fifteen. In the recent legislative session this legal age for marriage has been raised to thirteen.
- Upon reaching the age of legal or religious maturity, nine, girls are considered criminally responsible while boys face this condition six years later. According to Article 49 of the Islamic Penal Code, "children committing offenses are not liable to consequences of criminal responsibility and their rehabilitation will be left to their guardians or, if necessary, the center for children's rehabilitation upon the discretion of the court." Note 1 of the same Article goes on to say, "By a child it is meant a person not of the age of [legal and] religious maturity." Hence, according to the legislations, girls over the age of nine and boys over the age of fifteen would be subject to legal treatment as adults.

- Women are not allowed to travel abroad without their husbands' formal (written) permission. The Passport Act of 1972, which the Islamic Republic has maintained, directs women wishing to leave the country to submit a written permission by their husbands.
- Men are allowed to practice polygamy.
- Husbands enjoy the unconditional right to divorce their wives (Article 1133 of the Civil Code.)
- Divorced mothers have custody of their children up to the age of seven, and the father has natural custody if the court grants it (Article 1169 of the Civil Code).
- According to article 209 of the Islamic penal code, "if a Muslim man deliberately kills a Muslim woman he is sentenced to *qissas* (retribution of the same kind). However, before the custodians of the blood of the woman are allowed to carry out *qissas*, they must pay half the *diya* (blood money) of a man to the murderer."
- The *diya* (blood money) for a woman is half that for a man.
- In many legal cases, the testimony of women witnesses is not acceptable as proof or the testimony of two women is equal to the testimony of one man. For instance, According to Article 137 of the Islamic Penal Code, "pandering is proven through the testimony of two men." Article 74 of the same law states "committing adultery, whether it necessitates the religiously prescribed punishment of lashes or stoning to death, is proved through the testimony of four just men or three just men and two just women."
- The law unequivocally bars women from sitting as judges and being male is an essential qualification to become a judge.
- Women are not allowed to become presidents of the republic. Article 115 of the Constitution states, "The president of the republic is elected from among prominent religious and political personalities." Although the term "men" is not used in the Constitution, so far the term prominent personalities has been interpreted to mean only men.

The list may go on and on, but I think my point is clear enough about the fact that the notion of equal citizenship is seriously violated throughout the body of Iranian civil and criminal law. A comparable unequal treatment can be seen in discriminatory laws targeting non-Muslims. In fact, existing laws leave these minorities in a highly vulnerable position. To be sure, certain articles of the Constitution recognize equal rights for all citizens. Specifically, Article 19 of the Constitution states, "the people of Iran from any ethnic or tribal background enjoy equal rights and color, race, language and such likes do not entail any advantages." However, there are many instances in the Islamic Penal Code that contradict this very explicit constitutional provision. Among instances of discrimination against non-Muslim minorities, the following can be cited:

- According to Article 207 of the Islamic Penal Code "if a Muslim is killed, the killer is subjected to *qissas* (retaliation of the same kind)." This article inevitably leads to the conclusion that if a non-Muslim is killed, the murderer is not subjected to the same treatment.
- Article 210 of the same code states, "if a *kafir dhimmi* (a follower of recognized religious minorities, literally meaning a burden on the shoulder of the Islamic community) kills another *dhimmi*, the murderer is subjected to *qissas* even if the murderer and the victim belong to two different religions and if the victim is female, the custodian of her blood (next of kin as specified in the law) has to

pay the murderer half of the specified blood money for men before the murderer is punished.” The *dhimmi* in the Constitution is a follower of Christianity, Judaism or Zoroastrianism whose blood money is not, after all, considerable. The followers of other religions are not covered by the above provisions and are either deprived of blood money or the sum is so small that any murderer can kill them without the fear of a heavy punishment. Thus, the Islamic Penal Code does not safeguard the physical security of non-Muslims. Besides, according to some interpretations, non-Muslims are of two kinds, either *kafir harbi* (violent non-believer) or *kafir dhimmi* (literally a burden on the shoulder of the Islamic community). The latter term applies to the followers of Christianity, Judaism or Zoroastrianism and they can live within the territories of the Islamic state and enjoy state protection for their lives, property and honor. Apart from these minorities, those who belong to other religions or have no religion at all are called *mahdur ul-dam* (one who has forfeited his/her blood) and the Islamic state has no religious obligation to protect their lives, property or honor.

- According to section C of Article 82 of the Islamic Penal Code, if a non-Muslim man has sexual relations with a Muslim woman, he is punished by death, while according to the same article, if an unmarried Muslim man enters into adulterous relations with a woman, he is punished by one hundred lashes provided that the man is a Muslim, or if he is not and the woman with whom he has had intercourse is non-Muslim as well. It must perhaps be explained here that in the Islamic interpretation, adultery does not merely apply to extra-marital sexual relations between married persons. Any sexual contact outside of marriage is called adultery while that between married persons is qualified with the *muhseneh* epithet, which carries a severe punishment (i.e. stoning).
- A Muslim can inherit property from a non-Muslim, but a non-Muslim cannot inherit from a Muslim. According to article 881 of the Civil Code, “a non-Muslim does not inherit from a Muslim but if among the heirs of a deceased non-Muslim, there is a Muslim, the non-Muslim heirs do not receive any inheritance even if they are closer in line to the deceased person than the Muslim.”
- The followers of all religions have the right to be converted to Islam and benefit from the rights accorded to Muslims, but no Muslim has the right to choose another religion and if this happens, he or she is open to severe punishment foreseen for apostasy. This is despite that fact that in the Iranian criminal laws, there is no offense under the title of apostasy and the Islamic Penal Code does not define a change of religion as an offense. The term apostasy is referred to only once in the corpus of the Iranian laws. In Article 26 of the Press Act of 1985, change of religion, which is an instance of apostasy, is mentioned in the following terms: “Whoever uses the press to insult the sublime religion of Islam or its sacred tenets, if this action leads to apostasy, the ruling on apostasy is issued and carried out against him/her and if it does not lead to apostasy, according to the view of the religious judge, the punishment will be *ta'zirat* (punishment decided by judge).” Since there is no specific law to define apostasy or the punishment for it, and since according to Article 36 of the Constitution “sentencing and carrying out punishments must be done by the competent courts and according to law,” punishment of an apostate seems to be lacking in legal basis. It also seems that article 26 of the Press Law of 1985 which refers to change of religion has created the necessary means for the opponents of freedom to carry out their own will without the existence of a legal basis.
- A Muslim man can marry a non-Muslim woman and the children of such marriages are considered Muslims, but a non-Muslim man does not have the right to marry a Muslim woman unless he is converted to Islam before his marriage (Article 1059 of the Civil Code).
- Articles 12, 13 and 14 of the Constitution give the followers of the recognized religious minorities – Christianity, Judaism and Zoroastrianism- the right to practice their religions and also apply their



religious rules to their personal lives. Consequently, other religions do not have similar rights. Article 12 states, “The official religion of Iran is Twelve Imamate Shi’ism and this principle cannot ever be altered and other Islamic sects, including Hanafi, Shafe’i, Maleki, Hanbali and Zeidi enjoy full respect and their followers are free to practice their religions and act according to their religious laws and in their religious education and personal matters (marriage, divorce, inheritance, making wills) and related claims are recognized in the courts of law and in any area in which the followers of these religions are in majority, local regulations on the basis of the discretion of the councils, will follow their rules while safeguarding the rights of the followers of other religions.” Article 13 states, “Zoroastrian, Jewish and Christian Iranians are the only recognized religious minorities who are, within the law, free to practice their religious rites and follow their own religion in their personal matters.” According to Article 14, “the government of the Islamic republic of Iran and all Muslims are obliged to treat non-Muslim individuals with kindness and Islamic justice and equality and uphold their rights, this article applies to those who do not conspire or act against Islam or the Islamic republic.”

- Article 23 of the Constitution specifies that the followers of other religions and religious sects enjoy freedom of opinion. It also prohibits inquisition and says that no one can be prosecuted or persecuted merely for holding an opinion. At the same time, the Constitution fails to foresee for religious minorities the right of advocating their faiths or holding religious rituals in public.

Besides the patent inequalities described above, a close look at the Constitution reveals serious legal impediments to the fulfillment of the necessary conditions for the freedom of opinion, religion, and sect. These are, of course, to add to the arbitrary decisions the authorities have at times applied to non-Muslims in order to restrict their freedom. Among the examples of such policies, we can refer to the right to ration books, university entrance, registration of marriages and employment with the result that a group of Iranians have been deprived of their religious and human rights. One such example is discrimination carried out against the followers of the Baha’i faith, for which there is no explicit reference in the constitution.

A few years ago, Maurice Mo’amed, the representative of the Jewish minority at the parliament gave a speech (*Majlis* debates of 4.10.1379 reprinted in the official gazette No. 1627) that marked the first time that some of the discriminations against Iranian Jews and other minorities were openly discussed:

I hope that with the wisdom and good intention of the esteemed authorities, some of the problems faced by Iran’s small Jewish minority and other religious minorities will be addressed. It is necessary that in this sacred parliament, I refer to the discriminations practiced by the employment selection units of governmental and even some non-governmental entities, which stem from the enforcement of personal and individual ideas. I should in particular refer to the fact that to ban our educated young from governmental services or stopping them from enrollment at post-graduate and doctoral courses are against the sublime objectives of the Islamic Revolution and the recommendations of the departed Imam [Khomeini] and the Supreme Leadership and results in our educated people’s flight from the country. Another problem concerns the blood money payable to victims of car accidents in these days of fast traffic. I request the esteemed religious authorities and the respected officials of the Judiciary to pay attention to the blood money rulings issued for non-Muslim victims and adopt the necessary measures so that the blood of an innocent person is not wasted.”

In late 2002, the parliament and the religious establishment decided to address the inequality represented in unequal blood money for men who are religious minorities, finally equalizing payments. But the inequality between men and women still continues even though female parliamentarians have publicly stated that they will attempt to erase this inequality from the books as well. Despite some changes, fundamental problems persist. The unsatisfactory state of the rights of the minorities, particularly the followers of the Baha’i faith, who are deprived of security of life and property, puts great pressure on them and forces them to leave the

country. Considered a heretical version of Shi'a Islam, followers of the Baha'i faith are not even allowed to publicly declare their faith, enter universities, hold jobs, and so on until they publicly forfeit their religion. According to the recent published reports, the Brazilian government agreed to admit thirty Baha'i families as immigrants as a part of an agreement brokered by the UN High Commission for Refugees (Iranian daily newspaper *Hambastegi* 29 Dey 1379/ 30 December 2000).

The situation of the followers of the Baha'i faith is perhaps among the worst, but the problem of unequal treatment of citizens in Iran is endemic, operating at many levels. For instance, the Selection of Teachers and Other Employees of the Ministry of Education Act of 1995 that, along with a similar 1996 act, was extended to employment in other government departments, contains the moral, ideological and political criteria that applicants must meet (Article 2). These criteria are contained in several sections, the first of which specifies devotion to the sublime religion of Islam or one of the recognized religions, and the third of which requires the applicants to believe in and follow the system of the *velayat-e faqih* (guardianship of the Islamic jurists), the Islamic republic regime and the Constitution. Note 1 of this section exempts the followers of recognized religions, permitting them to be devoted to their own religions, but they are not exempted from other requirements. Thus, when a non-Muslim wishes to be employed, he must show devotion to the concept of *velayat-e faqih*.

According to Article 15 of the Employment Act, these qualifications must be proven upon expressed confession, or useful proof or indications and evidence. According to Note 1 of Article 15 of the Act, even the employment of temporary personnel, including wage laborers on a daily basis, on contract and so on, must conform to the requirements set above. This means that if an organization wants to employ a few workers temporarily, it must first ascertain their devotion to Islam and *velayat-e faqih*. The content of this act and many similar acts is clearly against the principle of the freedom of opinion recognized by Article 23 of the Constitution and puts the greatest pressure on non-Muslims.

Discrimination against women and minorities are not the only forms of discriminations practiced by the Islamic Republic of Iran. Free or independent thinkers (which is a loose translation of the term *degar andish*, meaning those who think differently) are those who do not fully endorse the political or legal structure of the Iranian state and declare their views in their speech or written works. For this reason, they usually face grave risks to their security. This legal insecurity results in insecurity in their lives, and deprivation of the rights to introduce candidates in elections and to create political parties or groups. Inevitably, the isolation of these individuals can cause harm to any prospect of creating a secure Iran.

Instances of discrimination against free thinkers are numerous. On the whole, the employment selection procedure, part of which was described above, can also be applied to free thinkers, depriving them of the freedom of employment, freedom to introduce or stand as candidates in elections or rise to higher political and governmental positions. Today, the system of inquisition and of prying into citizens' private lives and tendencies for the purpose of employment selection has become so serious and widespread that it is even used in the employment procedures for low-level employees.

With regard to standing as candidates in parliamentary elections or elections to rural and urban councils, the complications do not end. Because devotion to the official line is among the necessary qualifications, free thinkers have no chance of entering the race. In the Tehran urban council elections held in 1999, some of the candidates were asked by the Election Supervision Council not only to fill out the standard forms, but also to submit a written affidavit containing their commitment to *velayat-e faqih*. This requirement is of course against the spirit of Article 23 of the Constitution.

In addition to numerous instances of discrimination against free thinkers, there are pieces of the written law that go as far as to place their lives in jeopardy. Article 226 of the Islamic Penal Code states that "murder

results in *qissas* only if the victim does not deserve to be killed by religious criteria, and if he/she deserves to be killed, the murderer must prove that the victim deserved to be killed in the court of law.” According to the Note for Section C of Article 295 of the same law, “if a person kills another under the impression that the victim deserved death for *qissas* or believed that the victim was *mahdur ul-dam* (whose blood is forfeited), and the court accepts the argument but later discovers that the victim was not deserving of death for *qissas* or for being *mahdur ul-dam*, the murder is considered unintentional manslaughter. If the murderer proves that the victim deserved to be killed as *mahdur ul-dam*, then he is not liable to *qissas* and *diya*.” The term *mahdur ul-dam* (literally one whose blood is wasted) is a person whose blood, according to religious law, can be shed without entailing punishment and the murderer is not penalized for his action. Since there is no specific legislation containing the meaning of the term, the murderer can commit the crime and later claim to have done it under the impression that the victim was *mahdur ul-dam*. In other words, the person who has involuntarily lost his life is the one who is tried by the court, without being brought to trial, and may even be condemned to posthumous death! And if the victim is thus convicted, the murderer goes free. It is interesting that even if the murderer fails to prove his claim of having been convinced of the victim’s characteristic of *mahdur ul-dam*, the law foresees leniency and the murderer can pay the *diya* and escape *qissas*. This lenient approach, which is contained in some sections of the penal code, can be used with impunity by certain groups of criminals and or even utilized in the course of the internal power struggle within the ruling circles. The result, ultimately, is a dangerous assault on the security of individuals and even the nation. Although no trial or conclusive evidence has come forth regarding the so-called serial murders of a group of intellectuals and writers that occurred in 1997, given the revealed involvement of elements within the Ministry of Intelligence, it could be argued that these murders were made possible and justified by this sort of legal tendency.

There is no question that the Islamic Republic’s penal code is in need of basic revision and reform in order to end discrimination against women, non-Muslims and free thinkers. It is fortunate that the question of reform has become an important part of the public discourse in Iran. As pointed out by Ayatollah Mohammad Mojtahed Shabestari, a high-ranking reformist cleric, “The Islamic penal code is not only in need of amendment, it is capable of being amended.” (Quoted in Iran Daily, Vol. 6, No. 1578, 5 Mordad 1379 – 26 August 2000, p. 7). He added that it is possible for Muslim communities to abide by universal human rights criteria. This is of course something to be seen in the future.

## Chapter Four: Political, Economic and Cultural Freedoms

Freedom in area of social life must be discussed in the context of its supportive structures. In the political arena, political institutions ought to be compatible with the concept of political freedom and freedom of political participation.

### Political Structures

Political freedom means the ability of citizens to choose their government and the ability to be represented via the legislative or other important organs of the state. Political freedom allows people to criticize the policies of their rulers, and to form political associations, groups and parties. It also allows them to join these groups without inhibition. With political freedom comes free participation in the political process. In the modern world, the realization of developmental objectives has been identified with an increased recognition and acceptance of the import of political freedom. The question, therefore, is to what extent the existing political structures in Iran recognize political freedom.

The first prerequisite for the realization of political freedom is the presence of its necessary preconditions in the laws. In this regard, the existing Iranian laws in some cases create obstacles, rather than allow for the realization of freedom. There are many areas in which obstacles to political freedom readily operate.

### *Elections*

In the area of free elections, major problems persist. Free election means that, first, anyone—no matter what his/her political orientation happens to be—has the right to stand as candidate or introduce a candidate; second, that all citizens, irrespective of race, gender, religion and ideology, must be allowed to take part in elections. In present day Iran, such freedoms are not guaranteed.

For instance, several sections of Article 28 of the *Majlis* Elections Act deprive a part of the population from introducing or supporting the candidates of their own choice. According to this article, candidates must have the following qualifications when they register for election campaigns:

1. Belief in and practical devotion to Islam and the scared regime of the Islamic republic.
2. Citizenship of the Islamic Republic of Iran.
3. Expression of loyalty to the principle of *velayat-e faqih*.
4. Education at the level of post-high school diploma or equivalent (the equivalent is useful for members of the clergy who have only attended seminaries)
5. No criminal record in the province in which they stand.
6. Physical health to the extent of having the faculties of sight, hearing and speech.
7. Being no less than thirty years and no more than seventy years of age.

It is clear that sections 1 and 3 of this article prevent those who think differently and may not subscribe to the principle of *velayat-e faqih* from putting up a candidate and testing political support for their social views. In short, a large section of the Iranian people who do not express undivided allegiance to the requirements of sections 1 and 3 are deprived from having the deputies of their choice in the *Majlis*.

Another restrictive law is Article 3 of the Amendment to the *Majlis* Elections act of 1995, which extends the supervisory power of the Guardian Council so far as to give it the position of absolute supervision and even decision-making about who may or may not stand as a parliamentary candidate. The role of the

Guardian Council is defined in the Constitution. According to Article 91, “With a view to safeguarding the rules of Islam and the Constitution, and to see that the approvals of the Islamic Consultative Assembly are not in contravention with them, a council known as the Guardian Council shall be established consisting of the following: Six just clerics acquainted with the needs of the time and problems of the day.” These individuals will be appointed by the Leader or the Council of Leadership; six jurists who are qualified in various branches of law, from among Muslim jurists introduced to the Islamic Assembly by the head of the judiciary and appointed by the approval of the Assembly Article 99 of the Constitution further states, “the Guardian Council is charged with the responsibility of supervising the elections of the President, the Islamic Assembly, general elections and referendums.” With the 1995 amendment, this supervisory role is interpreted to include the right to reject the competence of any potential candidate without being obliged to offer any reasons or evidence. Thus, even those who declare their allegiance to the principle of *velayat-e faqih* may be deemed untruthful and be rejected by this council. Indeed this is precisely what has happened in the past few elections. Many candidates that were approved for previous elections were disqualified without explanation.

### *Political Parties*

Political parties are among the most important factors in creating linkages between citizens and the state. Political parties should be able to operate independently of the government and, by establishing political links with various sections of society, compete for power. Historically, Iran has not had a successful experience with grassroots activities of political parties and usually these parties have remained active only at the elite level. Laws passed after the Revolution, have contributed to this serious failure.

For instance, according to Article 10 of the Parties, Societies and Associations Act of 1981, applicants for the establishment of such entities must submit their request to the Ministry of Interior. The endorsement of the competence of the applicants rests with a commission that sits at the Ministry and is composed of the following officials:

- A representative of the prosecutor general.
- A representative of the high judiciary council (the judiciary council has now been replaced by the Judiciary and the representative is appointed by the head of the branch).
- A representative of the interior ministry.
- Two members selected by the Majlis. They may or may not be from among the deputies.

The commission has three months to study the application and the character of the applicant and has the right to issue a license or refuse to do so. Even if a party or society or association has received a license, the Article 10 Commission, may at any time decide that the party or society or association has committed an offense, and suspend its license. However, the commission does not have the right to revoke the license, which can only be revoked in a court of law and in front of a jury.

The existence and power of the commission means that free political parties are in fact inaccessible. The commission is composed of the representatives of the authorities and will essentially make room for those groups that fully support the authorities. In no way does it allow the establishment of parties that are independent of the government. Even article 26 of the Constitution that deals with the principle of the freedom of parties and formations is worded in such a way that empowers the authorities to enforce their own opinions in allowing political parties to be formed. According to this article, “guilds and political parties, associations and groups, Islamic societies and those of the recognized religious minorities are free provided that they do not violate the principles of freedom, liberty, national unity, Islamic standards and essentials of the Islamic Republic. No one can be stopped from participating in them or forced to participate in one of them.” The article emphasizes upholding Islamic standards, though no legislation has defined

such standards in a systematic way.

The ambiguity in this article has empowered the Article 10 Commission to prevent the right of freedom of association. Before Mohammad Khatami's election in 1997, some 39 parties, political societies and associations received permits from the Article 10 Commission of the Interior Ministry. By January 2000, the number rose to 103. Thus, during the 28-month operation of President Khatami's administration, at least 64 new parties and groups were granted operation permits. Nevertheless the ambiguities embedded in the constitutional clause regarding party activities not negating Islamic standards have prevented the approval of important political contenders that fall outside the closed circle of revolutionary elites. For instance, in July 2002, 33 members of Iran's only previously tolerated, but not legal, liberal opposition group, *Nehzat-e Azadi-ye Iran* (Iran Freedom Movement), were given stiff jail sentences by the Revolutionary Court for conspiring against the Islamic Regime. This charge was even rejected by the Ministry of Intelligence for lack of evidence. The Revolutionary Court also declared the Movement banned and dissolved. Legal observers, of course, considered this aspect of the decision as patently unconstitutional since Iranian laws are clear that the fate of a political party should be decided in an open general court with a sitting jury. In any case, the Freedom Movement was never given a license by Article 10 Commission to be revoked by the Revolutionary Court.

The difficulties associated with gaining a license are not the only problems parties face. Many political groups that have actually been given permission to organize as political parties have acted more as closed political cliques— without much effort to engage in grassroots activities and recruitment.

### *Freedom of Association*

Freedom of association, allows people to come together and express their opinion about the government and its policies, provided that they do not resort to violence. In Iran, this right faces serious breaches. Beside legal impediments, there is the question of the personal tendencies of those in power.

According to Article 27 of the Constitution, "holding meetings and marches without carrying arms is allowed provided that it does not violate the tenets of Islam." Nonetheless, section 2 of Article 6 of Parties, Societies and Association Act of 1981 postulates that holding any meeting requires a permit issued by the Interior Ministry. The law says, "Holding marches upon the notification of the Interior ministry and without carrying arms is allowed provided that the Article 10 Commission discerns that it will not violate the precepts of Islam, and also holding meetings in public squares and parks is allowed upon receiving a license from the Interior Ministry." As mentioned above, the commission is a representative of the authorities and naturally will not allow groups of free thinkers to hold meetings. Again the ambiguity in the law regarding "precepts of Islam" opens the door for all sorts of violations. For instance, attacks on participants of peaceful demonstrations under president Khatami, as well as current arrests of women, student and worker activists who participate in peaceful demonstrations, are all but in conflict with article 27 of the constitution.

Apart from these formal impediments, the role of the so-called pressure groups must be taken into account. Since 1997, they have been acting as the energetic and often violent arms of the opponents of reform within the state to the extent that by the middle of end of 2000, the right to hold meetings, as described by Article 27 of the Constitution, had more or less disappeared since many of these pressure groups insistent in disrupting these meetings through violent means.

Article 27, itself, contains a serious impediment to freedom of association. The article stipulates that freedom of association must not harm the precepts of Islam, which being a vague and undefined concept, allows any political faction within the state to prevent meetings by using its representatives at the Article 10 Commission. It is clear that in such circumstances, the proponents of political restrictions can justify

their own decisions in the context of the existing laws and in the guise of the defense of the religion. Those within the ruling elite who believe that prevention of political participation may endanger the system have, recently, warned about the absence of political parties. Even the intelligence minister has emphasized the need for some kind of pluralism by saying, "We do not consider political parties as dangerous. In fact, the absence of parties in society is believed to be dangerous and in the long run, against national security." (Iranian daily newspaper *Doran e Emruz*, 29 Dey 1379/9January 2001)

### *Non-governmental Organizations and Civil Society*

A non-governmental organization or a popular formation usually is an entity which has an organizational set-up, is independent of the government, is not-for-profit, remains representative of and responsive to social needs, and has voluntary membership. Specifically, an entity of this sort must have the following qualifications:

- It must be based on a charter or article of formation, must have a clear identity, and must be registered with the relevant authorities or at least have applied for registration.
- It must be independent of the formal or informal network of state activities and free from governmental financial regulations in its internal operation. It must have sufficient financial means so that the stoppage of governmental assistance does not lead to its closure.
- According to the charter or articles, members must not be permitted to use the revenues of the entity for their own personal use or use by their associates. The revenues must be allocated for the expansion of the organization's activities.
- It must be active in one or more of the following fields: health, population control, nutrition, education, sustainable development and environment, environmental health, children, women, human rights, refugees, rehabilitation services (physical, mental, social), social security, social reforms, culture and arts, sports, emergencies and disasters, employment creation and elimination of poverty.

It is important that such entities in no way engage in political activities and are not known as political parties, factions or groups, instead confining their activities to social matters. In Iran, a publication by the Iranian NGOs and Popular Formations Data Bank, which was published in the autumn of 2000 by the Family Planning Association, offers a definition of the NGOs in the following terms:

Many experts believe that in the 21st Century, management of societies and countries will be impossible without the participation of a) the state, b) the private sector, and c) civil society. The new trend in international relations, too, necessitates the expansion of participatory management at the national, regional and international levels. The corpus of the constitutional and other laws and rules of any country determines the structure of the management and defines the scope of the activities, duties and responsibilities of each of these three pillars.

The Data Bank goes on to give a simple definition of the way the three sectors can be identified. According to this definition,

Traditionally, states have represented nations at the international level and have been responsible for policy making, management, regulation and establishment of foreign policies and defense of the internal order or, in one sentence, have exerted their right of sovereignty on behalf of their subjects. The term private sector refers to all real or legal entities which follow the objective of earning profit in their activities, contribute to the development and progress of the nation, and raise the level of public welfare. Civil society entities are those real and legal entities that work towards the development of society with a non-profit making and socially useful objective. These organizations may deal with all areas of development and are sometimes called, intermediate or intermediary entities. The scope of their activities are different according to different authorities, but usually,

NGOs, charity and support organizations, scientific and professional associations, labor unions, cooperatives, mutual financial assistance funds (such as non-interest credit institutions) and even political parties and the media have been included in the definition of this sector.

The text justifies the existence of these entities on the basis of,

the need for public participation in formulation of development policies and plans, their application and evaluation which has been underlined as essential elements in social management. The promotion of the role and place of civil society is also important for the realization of this goal. The victory of the Iranian Revolution was made possible by the extensive participation of people, the role of the people and the need for their continued presence in various areas of comprehensive development of the country has been emphasized. It is clear that to achieve such participation, we need the existence of specific structures and framework to clarify the relations between the state and the people.

The document continues:

The Iranian-Islamic culture of our country is full of proud manifestations of philanthropy, sympathy, helping the weak, and offering charitable assistance that have continued throughout the history of this land. Such a culture is the birthplace of the culture of participation, reaching various layers of the society and finding its place. Thus, it is imperative that the definition of the concept of civil society in Iran should begin from an historical perspective and in the context of the traditional charity organizations and then, extend to the modern forms of organized participation within other civil society entities.

[As for the place of NGOs in this process, they] have a significant role to play. These entities with their own special functions, they prepare the grounds for the organized participation of the elite in the management of society and since they limit, but do not undermine political power, they find increased acceptance by both the authorities and the public. These entities can play different roles as critics, colleagues, inspectors, executive arm, and partner and so on in the process of development planning and for this reason they have to be backed by legislation defining their functions and mode of cooperation ... Accordingly, at the present juncture, it is necessary that all intellectuals and experts should pay serious attention to the promotion of popular participation in social management in the context of organized entities. It was for this reason that Mr. Mohammed Khatami ... received such an overwhelming support for his discussion of civil society.

Despite these supportive sentiments expressed in government documents, the reality is that the legal backing and protections for their establishment and operation of NGOs do not presently exist in Iran. For instance, in Iranian law, failure of the legislature to distinguish the role of non-governmental entities has resulted in a legal tendency intent on preserving the authority of the state. For this reason, the Interior Ministry has been given the task of registering NGOs according to Article 8 of the Parties, Societies and Associations Act of 1981. This is at odds with the standard practice in many countries by which registration of these organizations is carried out through simply posting a form. Consequently, registration of an NGO in Iran follows the same procedure set for the registration of political entities as foreseen by the above act. This means that Article 10 Commission must approve all applications for NGO status. The formalities involved in the registration of an NGO are extremely complicated and at present, even when an NGO is registered, doubts exist about its connections with the state. This is partly due to the fact that the process of registration through the commission means that the organization applying for the NGO status is hardly likely to be approved unless it has explicit or implicit links with the authorities, helping it to pass their scrutiny.

These legal and political impediments are again rooted in the ambiguities of Article 26 of the Constitution, which makes the registration of all organizations dependent on their pursuit of “Islamic standards.” As a result, NGOs face the same restriction foreseen in the Parties Act, and indeed many civil society entities, such as professional groups and minority associations, have found it difficult—even impossible—to receive



registration. The fact that the establishment of these entities requires the endorsement of the qualifications of their founders as described in Article 10 has made the interference of ideological criteria even more pronounced, making the establishment and growth of civil society even more cumbersome.

### *Urban and Rural Municipal Councils*

In democratic countries, local councils are among the most important manifestations of public will. Within such councils, the will and views of local deputies and officials gain weight against those of the national government. These councils make decentralization possible.

The first time that the concept of local government appeared in the Iranian laws was in articles 89 to 93 of the Supplement to the Constitution of 1907 where the formation of “urban and provincial associations” was foreseen. After the establishment of the Islamic Republic, the idea was reiterated in Articles 6, 7 and 100 to 106 of the Constitution. Subsequently, a number of laws and regulations were passed to deal with the topic. The first act was passed in 1990 and was amended in 1996 but the principle was only implemented until 1999. One reason for the delay in implementation was the lack of practical experience in the formation of councils (they did not even receive serious attention before the revolution). Moreover, the Islamic Republic’s legislation in this area tended to be more political in nature than legal.

Part of the problem with the establishment of local councils was that, although they are democratic instruments, they have historically been viewed as a means for strengthening ancient despotism in the Iranian context. Even though local councils and other democratic institutions were foreseen in the 1980 Constitution, they never gained popular grounding; rather, they usually acted under the guidance of the central government and served the highest authorities of the land.

The latest attempt at the formation of the councils was the 1996 act in which the operational mode of the election and formation of the rural and urban councils is set forth. Even before the elections took place in 1999, many experts had warned that given the 19-year delay in implementing a provision delineated in the 1980 Constitution, it was necessary to revise the 1996 law. They argued that the law was drawn up in such a way as to prevent the realization of full democratic rights of the people. For instance, Article 81 of the Councils Act states, “should a council act contrary to its specified duties or move against the national interest or make improper use of the property under its direction, the board for the resolution of disputes (at the rural level) or the central board for the resolution of disputes (at other levels) will dissolve the said council.” The same article says that in the case of councils other than rural councils, any digression from legal duties will lead to dissolution on the recommendation of the provincial board and the order of the central board. It is interesting that this article not only foresees the power to dissolve the councils, but the latter section does not refer to misappropriation of property as a reason for its dissolution. Instead, it refers to moving against the interests of the state.

Such a provision seriously undermines the independence and legitimate freedom of councils and runs contrary to Article 9 of the Constitution that reads, “no authority has the right to restrict legitimate freedoms in the name of preserving the independence and territorial integrity of the country even through legislation.” The councils act runs contrary to the *raison d’être* of local councils and impedes the pursuit of democracy.

### *Political Offenses*

In countries with more developed democratic structures, laws or traditions are such that political offenders are treated differently from ordinary offenders. Usually, they are treated more leniently and are not forced to suffer harsh punishments. Adopting a considerate approach to political offenders is a universally recognized principle and is in line with universal human rights criteria. The assumption is that the political offender has

acted with the belief that he or she is serving public interest.

The Constitution of the Islamic Republic of Iran takes the nature of political offense into account and according to Article 168, “[judicial] investigation of political and press offenses must be held in an open of law in the presence of a jury. The mode of the election, qualifications and discretion of the jury and the definition of political offense is set in law according to Islamic criteria.” Nonetheless, up to very recently, the Iranian legislature has neglected this emphasis of the Constitution and three decades since the establishment of the Islamic Republic, no laws on the subject have been passed. The most recent attempts by the last reformist-dominated parliament to define the meaning of political offense and also set guidelines for the selection of jury had been repeatedly rejected by the overseeing Guardian Council, which has deemed these legislative attempts against Islamic precepts. The result has been tension in various sections of society and the harm done to the relationship between the citizen and the state.

Given the absence of a clear definition, instances of political offense have been given names beyond mere “political offense” in a number of the Islamic Republic’s laws, mixing political offences with other offenses. Inevitably, the legal fate of political offenders in the Islamic Republic of Iran has been adversely affected. This confusion of political and ordinary offenses has had the following consequences:

- Political offenders are tried as ordinary offenders and criminals and suffer severe punishments that are meted out to this group of offenders.
- Because the nature of a political offense is not known, political offenders may be tried by the revolutionary, military or special clerical courts; courts in which the procedures are such that it is not easy to protect the rights of the persons accused of a political offense.
- Since political offenders are not charged as political offenders, the mode of their trials may be at odds with what Article 168 of the Constitution has foreseen. They are not tried by juries, neither are they held in camera. In cases where a jury is said to have been present, its membership is ordered by the judge, essentially contradicting the original intention of trial before a jury representing public conscience rather than acting as a group of judiciary officers.

The main feature of a political offense is that the government challenges a defendant, whose intention is to serve the public. He or she has not pursued his or her own personal gain and is facing a powerful accuser. It is for this reason that political trials should be open to public, so that public opinion is able to judge the accused. The trial must also be held before a jury in order to give people a voice in the course of the trial. In the present situation in Iran, the absence of a definition of political offense undermines the freedom of the opposition and the activity of political parties at large. Any person who does not fully tow the official line, even those active in the cultural arena, may well appear in court as criminals and receive harsh sentences. In the course of such trials, which are usually held in secret, there is no sign of a jury, and when a jury appears, the members are selected and appointed by the judge. It must be added that the Iranian legal system is based on the unity of judgment (discussed later) and the presence of a jury is foreseen only in political and press offenses.

### *Jury*

The presence of a jury at press and political trials is emphasized by all democratic systems, which describe the jury as the representative of public opinion. Through the members of the jury, the public supervises the course of a trial and offers its opinion as to what is favorable, and what is good or bad.

The Iranian Constitution only allows for the presence of a jury in press and political offenses. As mentioned

above, at present the Islamic Republic of Iran has no definition of political offense and, therefore, no political trials. In trials involving the press, at which a jury is present, the composition of the jury is such that it is, in itself, an impediment to the realization of citizens' rights. The Press Act of 1979 passed by the then Revolutionary Council (acting as an interim parliament) foresaw the mode of the selection of the members of the jury. According to this act, the Minister of Culture and Islamic Guidance in Tehran and the provincial governors-general in the provinces are to invite a group of government officials such as the head of the judiciary or the mayor or a number of people trusted by the local community. The total number of people thus invited to form the jury is fourteen, with seven individuals acting as active members and seven standing as their deputies. The list is then sent to the judiciary. The question is obviously whether such a jury can bring popular authority to political and press trials or is it an appointed representative of the state? It must be emphasized that the term "persons trusted by the people" does not refer to individuals elected by the public. They are in fact persons hand-picked by the authorities.

The Amendment to the Press Law of 1379 (2000), more than the original act, makes the press jury a group of state functionaries that are expected to reflect the opinion of the state at press trials. According to the new act, which was passed by the fifth parliament, the Islamic Propagation Organization, the Council for Policy Making for Friday Prayer Leaders, two of the most conservative state related entities, were added to the former offices whose representatives (one for each of these entities) choose the members of the jury. But even with such a jury, the 1379 act says that the judge at a press trial is not obliged to follow the opinion of the jury. Thus, the jury in the present laws is not only governmental but also without the necessary power. According to the act, in cases where the jury convicts the defendant, the court may acquit him, and furthermore, if the court convicts the defendant, there is recourse to appeal against the ruling, resulting in acquittal.

Given these circumstances, it is fair to ask what the function of the jury is in the present legal system of Iran? What part does public opinion play in the course of press trials? And when the decision of the court can go against the opinion of the jury, why does the act insist on trial by jury? Clearly much more needs to be done to enhance the independence and power of the jury system before it can legitimately be considered anything but a façade of due process.

Rendering the Iranian version of due process even more absurd, the act also gives permission to the revolutionary court and other judicial authorities to try press offenses before a jury chosen by the judge or to refuse to do so. Thus, defendants in a press court may easily be deprived of the presence of even the type of jury that is foreseen in other parts of the same law. This mode of trial poses great risk for press defendants and is, for obvious reasons, a much-favored type of trial for the forces that oppose the process of reform in Iran.

In conclusion, it must be said that political freedom is not easily attainable within the present structure as it faces a series of legal impediments. Change can only come about with major revisions of these legal impediments to political freedom. Such change can be brought about only through close cooperation between all three branches of the government. At present, these branches face serious structural defects and even when there are points of strength, the domination of the anti-democratic views puts them at serious peril.

With regard to cooperation among the three branches, the Judiciary over the last four years has resisted such cooperation and as such has been instrumental in preventing the freedom of expression, freedom of the press and freedom of those who hold different views. The impact of judicial decisions has been such that press and political trials have caused great tension in society and at times resulted in political crises. The serial murders that took place in 1998 and the events of the Tehran University dormitory in 1999, for example, have led to a series of judiciary decisions concerning the operation of the law enforcement and

security forces. Similar tensions occurred with the verdicts against a group of Iranians who took part in a conference in Berlin, resulting in public anger and raising serious questions about the stance adopted by the judiciary.

In response to this course of events, a Tehran parliamentary deputy, Ms. Elaheh Kula'i, published an article in the Iran Daily (3 Bahman 1379/23 January 2001, No. 1724) in which she warned against obstacles to greater public participation in the presidential elections that were to be held in the spring of 2001. She writes,

The extent to which the electorates take part in elections depends on the confidence they have in the political system in meeting their demands. In fact, in the developing countries, political participation is influenced by daily events. Since our country lacks effective social institutions, public view about issues such as voting in a presidential election is closely linked with current issues.

In other words, the behavior of the judiciary in punishing those with different views not only punishes those accused but also serves to undermine the democratic process as a whole, discouraging people from participating in politics in general.

### *Cultural Structures*

Cultural freedom entails the ability to enjoy the right to learn, teach, and engage in discussions and engage in research on various scientific, literary, and artistic activities with the end result of offering the fruits of research activities to the public. In present day Iran

There are many examples of restraints on cultural freedom, some of which have already been mentioned. For instance, the requirement that the applicant for a passport or enrollment at a university must declare his or her religion is enforced in full and, in some cases, leads to the failure to obtain a passport or entry to university. In addition, even though the Constitution and a number of other laws emphasize that all citizens have equal rights to educational and other facilities, half of Iran's population today, namely women, have limited rights. Women, for example, are not allowed to enjoy access to sports facilities. Various ideological restrictions, which are enshrined in various rules and regulations, have driven women out of the field of sports. To this list must be added the prohibition facing girls who want to enroll in certain courses and the ban until very recently on unmarried girls who, despite having passed necessary examinations, wish to study abroad.

Other instances can also be cited. According to Fatima Tondguyan, an advisor to the minister of education and the director general of the women's section of the ministry, "in less developed parts of the country, some 1.689 million girls are not receiving primary education because of lack of facilities ... the average school space per head of female pupils is 3.27 square meters compared with 5 square meters for boys, and from among 915 boarding schools in this country, only one third are for girls... while over one thousand sports halls are for boys compared with eleven for girls." (Quoted in Zanan Monthly, No 61. Esfand 1378/February 2000, p. 5). Tondguyan goes on to say, "although for the past two years, the percentage of girls who pass the national university entrance examinations has been higher than boys, and this year, 54 percent of all those who sat the examinations were girls, and of them, 57.2 per cent passed the exam, and even though the percentage of successful girls has a meaningful difference with that of the boys, girls face greater restriction this year in choosing their courses than was the case last year." (Ibid.)

Minority ethnic groups, which constitute large parts of the Iranian nation, have also faced various forms of restrictions. In predominantly Sunni Muslim communities, for example, Sunnis are not present at important decision-making levels and the local Shi'a minority tends to hold key positions. These minorities also face

restrictions in the use of their own languages.

At the scientific and educational centers, freedom of discussion and research is limited. From the early days after the Islamic Revolution, discussion and teaching of certain scientific theories have been banned and freedom of research has been violated especially through the expulsion of university teachers and censorship in the publication of ideas. No doubt these restrictions in the forms of the circulars of the Supreme Council of Cultural Revolution and numerous other entities must be repealed. In this manner, during the presidency of Mr. Ahmadinejad, the academic freedoms are considered fundamentally against Islamic and revolutionary values and are being confronted.

Though during the reformist period, a faction of the ruling establishment, led by President Khatami, attempted to loosen cultural restrictions. This faction was under a constant publicity assault by other factions defeated in the presidential elections of 1997. But there is much to be done, particularly in the area of gender relations. Says the director of the education center of the women's participation organization, affiliated to the office of the president:

Our girls do not have a positive view of their gender resulting from lack of training in basic skills and the non-strategic views and teachings around them which make them dislike their gender. Today, we see girls who are far from what our values dictate because they do not have an appropriate cultural role model. This is because, unfortunately, in our society, cultural development has been emphasized after economic development. At present, the culture of imprisoning women in the house and restraining her there and preventing her from taking part in healthy and proper activities according to her capabilities is being propagated unofficially. The girl of today is in need of a strategic change and if we try to bring her up according to the traditional view, she will hate religion or become fanatical, will hate society or become entrapped in social ills, and as a result, will become more vulnerable as evidenced by the data collected in the Gilan province, showing that the vulnerability women in recent years has increased dramatically. (Quoted in Iran Daily, No. 1595, 25 Mordad 1379/ 15 August 2000, final page).

In fact, official statistics show that social vulnerability of women, mainly in the form of prostitution, has been on the rise not only in the province of Gilan, but also throughout the country and even in cities that are heavily religious. What can be said is that the cultural policies of the state over the past twenty-two years since the Revolution—policies that have given priority to religious and moral values—have failed and now it is time to admit this failure and, finally, revise these policies.

The failure is not surprising. The use of violence to impose any set of values and criteria inevitably leads to a negative reaction and, finally, backfires. For this reason, the present cultural structure of Iran, presented on the surface by the state as the triumph of values, is in itself contrary to these values. Indeed it is quite possible that if attention is not given to the cultural arena and violence against the young and women continues, these groups will become even more vulnerable to the extent that the existing cultural crisis will destroy our best people and annihilate the future prospects of our young and potentially active population.

The need to follow policies to support the human rights of students is among issues to receive attention in revising current cultural policies. Today, even our university students who face various kinds of suppression and shortages are at the risk of serious social harm. They are routinely arrested for expressing their explicit desire for more political and cultural freedom. The sad part of all this is that many know exactly how policies and particular state priorities have led to the present cultural deterioration. But they are prevented from pursuing more constructive policies by officials who refuse to give up power or change their opinion. Jalil Sazgarnejad, a reform-oriented parliamentary deputy from the city of Shiraz says:

83 per cent of the budget for the cultural arena as it appears in the 1380 [2001-2002] budget bill will go to institutions which are either opposed to the President or refuse to cooperate with him

and this is a sign of the injustice done to the cultural arena of our society ... The cultural arena is without support and only half of a one per cent of the government budget is earmarked for cultural works. I give you two instances from the city of Shiraz where the old public library which was set up in an old building 52 years ago is fast falling down, and of 13 cinemas which existed before the Revolution, only 7 cinemas are operational now.” (Doran-e Emruz, 29 Dey 1379/ 19 January 2001, No. 55, p. 1)

Fatemeh Rakei, a deputy head of *Majlis*' Cultural Committee, also portrays a dark picture. According to her,

the existence of numerous planning and decision-making centers and the absence of a systematic approach to various cultural fields are among the main problems of this arena. Our policy makers in the cultural field must join hands and coordinate the activities of a multiplicity of cultural institutions and entities ... A problem is the impossibility of revising the cultural policies of the state ... and if the present trend continues, the future cultural conditions of the country will give rise to great anxiety...” (Aftab-e Yazd, 4 Bahman. 1379/24 January 2001, No. 287, p. 11)

What Ms. Rakei notes is that after the Islamic Revolution, the existence of numerous centers in charge of policy making, along with the existence of unknown centers for the propagation of religious values (all of which receive huge funds), have combined with talk of a supposed Western cultural (hence justifying the existence of these centers) and a failure to pay attention to the cultural needs of women and religious minority have turned culture into a weapon in the hands of the dominant faction within the establishment. Those who oppose the restrictions imposed upon people in the name of religion are subject to attack. Naturally, as long as cultural chaos reigns, and it is impossible to revise cultural policies, cultural freedom remains inaccessible. Currently, under the presidency of Mr., Ahmadinejad, some democratic organs formed in the universities such as elected societies or student run press are severely attacked by the secret agencies and the Ministry of Science; moreover, many prominent academic activists and thinkers have been arrested with the charge of participation in peaceful demonstrations, while the majority of student-run publications (journals, newsletters and magazines) have been shut down.

### *Economic Structures*

Economic freedom allows members of a given society to find employment of their choice provided that they do not exploit others and do not break the laws. Economic freedom is aimed at raising the level of public welfare and fighting poverty, hunger, and disease. Economic freedom allows the public to take part in the formulation of economic laws such as the labor code, social security laws and so on.

In the process of economically developing a country, the pace of growth may slacken if it comes up against structural, legal, mental or other obstacles. Thus, it is necessary to find these obstacles in different areas and attempt to remove them. And to know the obstacles, it is necessary for researchers and experts to have the freedom to investigate the economic life of the nation.

In underdeveloped systems, the traditional classes, which usually monopolize decision-making levers, often stifle the freedom of investigation and the freedom of expression of results of studies that could help policy-makers. In post-revolutionary Iran, this tendency has been strong and has virtually halted the process of economic growth and development. The Iranian economy has not done well since the Revolution. Internal tension, instability, and the absence of judicial and political security alongside the intervention of mercantile capital, which is the largest holder of wealth in Iran, have prevented the creation of a healthy economy. Also, much of the public and national assets are concentrated in revolutionary foundations and other “public” entities, which are not under the control of the government. These foundations, such as the Foundation for the Disabled and Oppressed (*Bonyad-e Mostas'afan va Janbazan*), consisting of some

40 mostly economic and religious charity foundations that found their origins in the property confiscated from the extended royal family as well as many others. Claiming to be non-profit organizations, these foundations, which are mostly run by influential clerics, are tax-exempt. Some of these organizations, originally intended to serve a particular clientele based on their needs, have developed into giant business conglomerates, benefiting from favorable government exchange rates, regulations and contacts without much government oversight. Vastly unrelated and badly diversified, these conglomerates own and operate firms in agriculture, industry, commerce, transportation, construction, and others with absolutely no synergy or externalities. Most of them produce only a fraction of normal returns on their assets, but they are said to bankroll various clerical fiefdoms, or specific non-governmental activities, which have thus far been immune to state encroachment.

In addition to structural problems, the fall in oil revenues in the first two years of Khatami's Administration brought these shortcomings to the surface in a stark way. The harmful results of the economic policies pursued by the previous administration of Ali Akbar Hashemi Rafsanjani, which led the country into rampant stagflation, reduction of exchange reserves, a rise in foreign debt and a 40 percent budget deficit began to reveal themselves fully. The high rate of inflation has meant that most people live below the poverty line and measures such as raising pensions or the minimum wage rate cannot make much difference to the situation. Only those who have access to exchange earnings are able to have a decent, and in some cases luxurious, standard of living.

Writes Mehdi Taqavi:

In 1377 [1998-9], the economic condition of the country worsened. The rate of economic growth fell and the rate of growth of capital formation was minus 5 percent while budget deficit amounted to 33 per cent of the total budget. Some economists predict that if the present conditions continue, the rate of unemployment for years 1385-88 (2004-9) will rise to respectively 31.7, 33.8, 35.8 and 37.8 per cent on the basis of the rate of inflation for year 2000 at 17.5 per cent.

At the outset of the third millennium, the Iranian economy, despite vast natural resources and a young and educated labor force, suffers from continuous shortages. Wrong economic policies, changes in economic decisions directions, unsuitable rules and regulations, an interfering bureaucracy, unfinished policies of economic adjustment, political conflicts, weakness of the Judiciary, thousands of unfinished projects have combined to create high rate of inflation, high rate of unemployment, low standards of living, and social problems ... The judiciary, too, is not operating properly especially as regards to laws on bankruptcy and default in debt servicing... The share of the Iranian economy in world foreign investment is very low ... and the same reasons that inhibit domestic investment, act to prevent foreign investment. (Asre Azadegan, No. 133, 26 Esfand 1378 /16 March 2000, p. 19).

The failure of the Iranian economy to attract foreign investment has been discussed by many specialists. According to Marjan Nazifi, the reasons include "absence of political and economic stability, different and conflicting orders by various organs on a daily basis, absence of appropriate policies, difference of opinion among officials as regards to the attraction of foreign investment which adds to the risk of investment" And to remedy the situation,

it is necessary to support the information industry, bring about transparency to trade laws and laws on property, raise the level of investment in human resources, reform the Tehran Stock Exchange (and in particular, separate it from the state owned banking system), advance a series of cultural measures and so on ... and in particular, it is essential to amend laws on the attraction and protection of foreign investment in a way as to give the foreign investor greater options and the necessary protection. The program of the free trade zones must be changed toward attracting foreign capital" (Asr-e Azadegan, No. 133, 26 Esfand 1378/ 16 March 2000, p. 35).

Since the writing of this article Iran has passed a foreign investment law that attempts to guarantee the security of foreign investment. The impact of the law is yet to be seen.

Another obstacle facing economic freedom is the legal status of the foundations. These entities are neither private, nor state-owned and are not set up as cooperatives; that is, the three modes of ownership foreseen in Article 44 of the Constitution. These entities are closed to inspection and thus prone to corruption. In the absence of competition, they enjoy immense economic benefits without sufficient productivity. They pay taxes, but neither directly to the government nor in full. For instance, the companies under the Foundation for the Oppressed pay some kind of tax to the government but do not pay a tax on its incomes. To nationalize the foundations would not solve the problem since state-owned companies are also highly inefficient. But they must be open to inspection. As pointed out by Musa Ghaninejad, a leading Iranian economic theorist, “the main economic problem today is the political monopoly and economic rents which influential people and groups enjoy through the existence of these foundations” (Aftab Emruz, 27 Azar 1378/ 17 December 1999, p. 2).

The development of a healthy economy that enhances the creativity and industry of individuals is not only a matter of growth-oriented policies. It also requires a legal framework that assures equitable treatment of economic units and assures a safe investment environment for them. This is something that is sorely lacking in Iran. The Iranian judiciary has not proven effective in enforcing laws in an equitable manner. Moreover, since the Revolution, the legislature has passed various laws that simply frighten off potential investors in the manufacturing and industrial sectors and instead lead them to earn high rates of return in the financial and trade sectors. For instance, in the legal system of Iran, a person who receives a court ruling indicating that he has suffered damages does not receive the damages for default. For instance, if a person lends a sum of money to another in the form of joint investment, and the second person does not return the money on the agreed date, the case can go to a court. The plaintiff, who is obliged to follow the matter for several years, may finally receive a ruling in his favor. But the borrower is only ordered to pay the principal and is not required to compensate the victim for the delay of perhaps several years. The law does not allow the lender to demand interest or damages and if he is successful in the case, he will only receive the original sum, which due to inflation has lost much of its original value. The awarding of damages is banned in religious law. Since according to the Constitution all laws and regulations must conform to religious orders, the judge cannot decide differently. The consequences of such a legal approach are clear enough. Since the offender is not obliged to pay damages, it is actually quite rational for persons who have the means of investing in some productive line to enter into businesses, which are part secret and part open. Misusing religious rules, they often do receive high rates of interest and sometimes make use of other people’s money for the purpose. Their success in putting a religious veneer on their activities means that they earn huge incomes.

Such laws also undermine confidence in the economy. For this reason, the spirit of Article 43 of the Constitution, which refers to the need for economic growth, is not reflected in ordinary laws. Article 43 of the Constitution states;

For ensuring economic independence of society, uprooting poverty and deprivation and meeting the needs of man in the process of growth, maintaining his freedom, the economy of the Islamic Republic of Iran shall be based on the following considerations:

- Satisfaction of basic needs: Housing, nutrition, clothing, health, medical treatment, education and necessary conditions for the setting up of a family, for all.
- Creation of work conditions and opportunities for all for the purpose of achieving full employment and placing the means of work at the disposal of those who are able to work but lack the means, in the form of cooperatives, by extending interest free or interest-bearing loans, or by any other legitimate method that leads neither to the accumulation or circulation of wealth in the hands of certain individuals or groups nor to the government becoming a big and absolute employer. Such measures must be taken with due consideration to the needs governing the general planning of the national economy in every phase of growth.



- The drawing up of the country's economic plans in such a way that the form, content and work hours that every individual, in addition to his vocational pursuits, has sufficient time and ability for moral, political and social self-development, active participation in the leadership of the country as well as the development of skill and initiative.
- Observance of the freedom of choice of vocation, non-coercion of individuals to take up a certain job and prevention of exploitation of the labor of others.
- Prohibition on causing harms to others, monopoly, hoarding, usury, and other religiously void and prohibited transactions.
- Prohibition on waste and extravagance in all aspects of the economy, whether in consumption, investment, production, distribution and services.
- Use of science and technology and training of experts in proportion to the requirement for growth and development of the country's economy.
- Prevention of foreign economic domination over the country's economy.
- Emphasis on increase of agricultural, livestock and industrial products so that they will meet public needs, leading the country to self-sufficiency and freeing it from dependence.

Despite these grand objectives, numerous experts have issued warnings about the legal defects over the past 28 years, but none have been heeded.

Another factor that impedes investment, especially by foreign nationals, is the tendency of members of the law enforcement and the judiciary to pry into the private lives of individuals and to fail to guarantee the protection of their lives. A foreign investor is willing to bring his capital to a country where the laws protect his life, property, and dignity. In a country where blood money for a non-Muslim is so small, and if a Muslim kills a non-Muslim, he is not punished accordingly, by only a small sum of money, and may escape the consequences; in a country in which non-Muslim women are forced to wear the veil and the law enforcement forces wait in hiding for a week in order to ambush a New Years party, arrest and imprison and whip the guests, the foreign investor is unlikely to arrive with his capital.

These problems do not go unnoticed. Fakhroddin Saberi, a member of the Sixth *Majlis* representing Ramsar, Tonekabon and Abbass Abad, explained the unsatisfactory state of the economy in his speech in the *Majlis* on 6 Dey 1379 (26 December 2000) printed in the Official Gazette No. 16282. This important speech addressed some of the primary needs of the economy:

While trying to create the necessary grounds for the realization of economic equality under the Constitution, the *Majlis* should pay attention to the problems of the livelihood and security of the nation in view of a 16 percent rate of unemployment that particularly hurts the young. There are a number of solutions, some of which are as follows:

- Revising past policies and adoption of rational economic policies.
- Revising laws and regulations concerning economic activities.
- Supporting and protecting investment through creation of sufficient security.
- Attraction and protection of foreign investment.
- Promotion of non-oil exports through reducing the pressure of unnecessary laws and the bureaucratic system.
- Having an international outlook and trying to participate in international communities and associations.
- Promotion of tourism.

What are the impediments to development and to what extent is the bureaucracy allowed to dominate the system? When will rules and regulations replace personal relations? And when will Article 76 of the Constitution, which says that the *Majlis* has the right to investigate the affairs of the nation, be applied? Why should a number of economic and cultural and political centers remain inaccessible to the *Majlis*?

Before the speech was given, the Expediency Council, a cleric dominated institution created to resolve conflicts between the *Majlis* and the Guardian Council, issued an approval by which the constitutional right of the *Majlis* to investigate all organs and entities will not extend to various foundations and institutions under the Supreme Leader. Saberi refers to this approval in the following quotation:

Even a superficial look at the events of past twenty-one years shows that some one thousand individuals have been in charge of decision-making and have worked as the heads of important organizations and centers in country of 60 million souls! Why do we not trust new and expert and innovative managers? ... In my constituency, the gentleness of the population and the beauty of the environment have misled some of the officials of the country and as a result, the people of my constituency have a very small share of agricultural and industrial credits. Would you believe that the people of Ramsar who live next to the sea, are deprived of sufficient drinking water even in winters? Do you know that despite the natural attraction of the area, we have little facilities for tourists? I suggest that the government should look at the question of tourism in a serious way. Do you know that despite the fact that my constituency is one of the best agricultural regions with 20 large rivers, our farmers suffer from water shortages in the farming season? The foundations and various contractors exploit the local forests, but not even a small part of the profit is returned to the area. And if the current trend in logging continues, the people of the region will have to pay the environmental costs. The implementation of the policy of the re-settlement of the forest dwellers has resulted in their unemployment and entanglement in complicated legal cases. The usual rent earning in the imports sector has meant that the rice and tea farmers of the region suffer heavy financial losses. To summarize, as regards the development projects of the region ... they present a museum of unfinished projects.

The problems mentioned by this member of the *Majlis* are not confined to his constituency. Other regions with fewer natural resources are worse off. Fariborz Rais-Dana, a leading Iranian economist and critic of government policies, offers the following picture of the economic conditions of the country during the reform period.

The Sixth *Majlis* should deal with problems such as corruption, bribery, and vast wealth of unknown origins and individuals or institutions that have prevented the process of development. The Sixth *Majlis* has a duty in the area of economic improvement on the basis of its vast popular mandate. The reformists have a majority and can decide about problems such as fight against corruption, bribery, and accumulated wealth resulting from the political power of certain individuals and institutions that essentially live a parasitic life. The fate of this wealth and the mode of division of economic power must be decided in the *Majlis* and it is only then that social justice will arrive... Until we achieve social justice, people's purchasing power cannot rise and funds will not be invested. (daily newspaper Iran, No. 1595, 25 Mordad 1379/ 15 August 2000 in the "What's new" page). However, things have changed even more over the past two years, since the election of president Ahmadinejad, whose campaign had promised economic justice. His economic promises have not been met though, and rates of unemployment, inflation and poverty have skyrocketed. Over the past two years, there has been a significant drop in the welfare of a large part of the population, and individuals' economic rights have been violated.

## Chapter Five: The Legislative Process

The legislative process in Iran must be viewed in the context of a group of rights and responsibilities given by the Constitution to the Islamic Consultative Assembly or *Majlis*, the Guardian Council, the President, the Supreme Leader, the Expediency Discernment Council and the leading clerics and sources of religious emulation.

According to Article 71 of the Constitution, “The Islamic Consultative Assembly can enact laws on all matters within the limits specified by the Constitution.” This is qualified by Article 72, which explicitly states, “The Consultative Assembly cannot enact laws contrary to the principles and rules of the official faith of the country or the Constitution. This will be decided by the Guardian Council in the manner set forth in Article 96.”

Article 91 of the Constitution introduces the Guardian Council with the following terms: “With a view to safeguarding Islamic commands and the Constitution, so that the legislation of the Islamic Assembly are not in contravention with them, a council named the Guardian Council shall be established composed of the following: 1) Six clerics, just and acquainted with the needs of the time and problems of the day. These individuals will be appointed by the Leader or the Council of Leadership; 2) Six jurists who are qualified in various branches of law, from among Muslim jurists, introduced to the Islamic Assembly by the Head of the Judiciary and appointed with the approval of the Assembly.”

According to article 96, the majority of the clerics of the Guardian Council will decide whether the legislation passed by the *Majlis* is in conformity with the precepts of Islam, while the decision with regard to the conformity of the acts with the Constitution comes from the majority of all members. A bill is passed into law after it is passed by the *Majlis*, approved by the Guardian Council, and signed by the president. In 1988 a council named the Expediency Council was created for the purpose of settling disputes between the *Majlis* and the Guardian Council in legislative matters. This 36-member body, appointed by the Leader, is now also a part of the legislative process in case of disputes.

In the legislative process, either the members of the *Majlis* (currently 290) or the government may introduce bills to be debated by the *Majlis* and approved or rejected by the members' votes. These bills are discussed in specialized committees before they are brought to the floor of the House. According to the Constitution, the parliament's important functions include drafting legislation (Articles 71-75), ratifying international treaties (Article 77), approving state of emergency declarations (Article 79) and loans (Article 80), examining and approving the annual budget (Article 52), investigating all the affairs of the country (Article 76), agreeing to the cabinet request for proclamation of martial law for no more than 30 days and, if necessary, removing from office cabinet ministers and recommending the removal of the president to the leader on the basis of political incompetence (Article 89). The parliament has over 20 permanent committees with the task of carrying out the initial discussions about bills and motions. Moreover, select committees are formed as the need arises. Permanent committees include a Question and Review Committee, which has the task of reviewing the questions of members of parliament to ministries and the latter's replies. If the replies are deemed unsatisfactory, the members of parliament can bring forth a motion of no confidence regarding the minister concerned three times. Parliamentary committees also include Constitutional Article 90 Petitions Committee, which has the task of investigating the complaints of the public against government organizations.

At the same time, according to the Constitution, the legislative process in Iran is such that it requires extensive cooperation of the seminaries and the clerical members of the Guardian Council. Without such support, the legislative process and the political environment in the country become tense and conflictive.

This is presumably why when the Constitution was amended in 1989, it made permanent another entity called the Expediency Discernment Council of the System (Expediency Council in short), which was created as a temporary measure to end the deadlock created by the opposing views of the *Majlis* and the Guardian Council. But the presence of this entity simply adds to the complexity of the legislative process in the Islamic Republic and has so far not been able to conflicts between the two legislative arms of the system in ways that reduce political tensions.

Article 112 of the Constitution, describes the formation of the Expediency Council as a means of determining action in cases where “a ratification by the Islamic Consultative Assembly shall be rejected by the Guardian Council on the grounds of inconsistency with the principles of religion or the Constitution and the Assembly shall deem such ratification’s necessary in due consideration of the matters in the interest of the system of the Islamic Republic of Iran. In such cases, the Expediency Council shall conduct consultations on the matter referred to it by the Leader and shall perform other tasks set before it. The Leader shall appoint the permanent and temporary members of the Expediency Council. The rules pertaining to the operation of the Council shall be drawn up and approved by the members and confirmed by the Leader.”

This complicated structure has thus far assured the dominance of the conservative forces in the legislative process, ensuring that before any change may occur in legislation, there be at least two other non-elective bodies that can check the legislation. It also assures that legislation does not come by the will of the people and through their elected representatives, but rather, through a process of intense political negotiations among elected and non-elected institutions. The *Majlis* cannot be certain of the support of the Expediency Council when a conflict arises between the *Majlis* and the Guardian Council. Such support can come about through political negotiations and only when there is no important difference of view between the *Majlis* and the Expediency Council. When there is conflict and varying political allegiances, as there often was for the reformist parliament since its election in 2000, the representative and elective branch of government proved ineffective in their pursuit of popular wishes.

The only means at the disposal of the elected representatives are those foreseen in Articles 6 and 59 of the Constitution. Article 6 states that “In the Islamic Republic of Iran, national affairs must be managed on the basis of public will as expressed through elections of the President, the members of the *Majlis*, the members of local councils and so on, or through referenda as described in other sections of this document.” Article 59 adds, “In crucial economic, political, social and cultural matters, legislative power may be enforced through public plebiscite. A request to hold a referendum must be approved by a two-third majority of the members of the *Majlis*.”

This provision, although helpful, is not easy to apply. Referenda are considered the last resort and obviously, arouse the reaction of those within and outside of the *Majlis* who are opposed to the expression of public will. This signals additional tension. Besides, the Constitution says that only “crucial” matters can be put to public referendum, which means that two-thirds of the members of the *Majlis* must be convinced that a question is crucial. Failing this, no referendum may be held. At the time of writing this monograph two bills, one to enhance the power of the president to enforce laws and the other to reform the electoral procedures, are going through the legislative process. The parliament will undoubtedly approve both bills but chances of the bills being approved by the Guardian Council, or the Expediency Council in case of disagreement between the two bodies, are not high. Members of the parliament have hinted that in case of their rejection, they will call for a referendum on the bills. Whether they will be able to do so is not clear.

On the whole, even though the legislative procedure in the Islamic Republic has witnessed the creation of a number of instruments that may mollify obstacles to reforms, they are minimal. As mentioned above, at present, the political inclinations of the Guardian Council and the Expediency Council are not the same as that of the majority of the *Majlis* members. In addition, since no referendum has thus far occurred, it is

not clear whether a decision by the *Majlis* to hold a referendum must, like any other approval, receive the endorsement of the Guardian Council before it can be enacted.

The result of all this ambiguity is that, even when it seems that the people of Iran have elected a legislature dominated by members who ran on a reform platform; their popular legislative actions are faced with the opposition of the Guardian Council and the Expediency Council. As a result these councils have become the focus of public anger as the defenders of despotism and opponents of reform.

It is also important to note that despite the success of the reformists in the 2000 *Majlis* elections, about 12 million potential voters refrained from casting their votes. This abstention, compared with the large turnout at the preceding presidential election, requires a separate analysis. What is significant is that despite the clear popular choice in favor of reform, there are serious institutional blockages in the system that prevents the popular choice from becoming realized. Bearing in mind that the Guardian Council is also empowered to approve or reject candidates for the presidential or parliamentary elections, what is exhibited in Iranian politics on an everyday basis is the fact that there are institutions constitutionally empowered to legislate on the basis of popular sentiments and interests but they are routinely thwarted by non-elective institutions that are currently quite openly at odds with popular sentiments.

## The Legislature in Action

As mentioned above, the legislative procedure in Iran is marked by serious structural weaknesses. The *Majlis*, as the most prominent source of law making, is deprived of the necessary independence. The first elected *Majlis* after the reform which was the 6th *Majlis*, had a majority of pro-reform members and this was a promising sign. As was mentioned under the topic of Structure of Legislation, even if this parliament wanted to, it would not have been able to pass democratic bills because, as was said, it would encounter confrontation by the Guardian Council. In fact, the parliamentary deputies, themselves, became the object of criticism and were legally pursued by the judiciary in an attempt to crush all freedom of speech even within the parliament.

In the first year of the life of the sixth *Majlis*, countless instances of its voice being rejected by the Councils can be mentioned. For instance, the Expediency Council approved a directive in 2000 through which the right of the *Majlis* to scrutinize the activities of all entities under the direct control of the Supreme Leader was withdrawn. This happened despite the fact that article 76 of the Constitution explicitly states that the *Majlis* has the right to investigate every affair of the state. The decision of the Expediency Council is, thus, a clear violation of the Constitution. It is also open to criticism from a political point of view. The *Majlis* is empowered to investigate the affairs of the state in order to prevent misconduct in various entities. The Expediency Council directive violates this very important mechanism for checks and balances. Moreover, if the Expediency Council continues to violate the articles of the Constitution, it may in time evolve into an appointed legislative branch against the elected *Majlis* and the resolution of possible conflicts between the two will necessitate the establishment of yet another entity. Nasser Katouzian, a leading constitutional lawyer writes:

On the basis of Article 76 of the Constitution, the Islamic Consultative *Majlis* has the right to investigate all aspects of public management and this principle is devoid of any ambiguities. If the *Majlis* is deprived of this right, we should either say that the entities under the Supreme Leader are not among the affairs of the state, which is absurd, or we should say that the Expediency Council has the right to act against the Constitution if it deems such an action expedient, which is not an acceptable view. I do not know the argument of the Council, but its spokesman has said that the interpretation of the Constitution is the duty of the Guardian Council and since this Council had decided the point, the Expediency Council endorsed it. This is a false argument. The Constitution

says that if a difference arises between the *Majlis* and the Guardian Council regarding the points of the Constitution or religion, the Expediency Council has to act as an arbiter in this dispute and decide the correct view. Therefore, saying that since the Guardian Council had decided in a certain way, the Expediency Council had to approve it, is wrong. ... This event has raised the question of what is going on in there. Scrutiny over all affairs must be upheld and nothing should be concealed from the representatives of the people. This is among the laws to be amended and the *Majlis* can legislate other laws to assume the right of supervision. (Quoted in Vekalat Monthly, no. 10, p. 8)

The Expediency Council also sided with the *Majlis* in its attempt to increase the age of marriage for girls from 9 to 13. Despite positive results in some cases, the fundamental problem of continuous conflicts between elective and non-elective bodies remains acute. In fact, the conflict between the *Majlis* and Guardian Council became so intense that in 2001, for the first time in the history of the Islamic Republic, they could not even agree on the budget for the Iranian calendar year 1380 (2001/2002) on the basis of six contested issues. The disagreements were ultimately referred to the Expediency Council. That body tried to strike a balance in the conflict, and sided with the parliament on the issue of foreign investment and funding for political parties but rejected parliamentary attempt to limit state funding of the conservative-controlled radio and television. It also refused to take into consideration the parliament's demand that the government be given the right to study the budget of foundations owning business enterprises under the direct supervision of the Supreme Leader—presumably on the ground that the Expediency Council had passed a directive a year earlier exempting such organizations from government scrutiny. The intensity of conflict between the parliament and the Guardian Council continued into 2002, even affecting the legislative process itself. According to Shahrbanu Amani, a female deputy, the parliament spends four days a week on legislation and one out of those four days is exclusively spent on bills returned from the Guardian Council. She went on to say that some of the changes required by the GC undermine the original purpose of the bill (Reported in Hayate-No, 26 Azar 1381 - 17 December 2002, p. 2). The current and 7th parliament with a conservative majority, has completely omitted the concept of passing democratic laws from its agenda and the parliamentary provisional authorities that are the topic of article 76 and 90 of the Constitution have been practically disabled. In other words, instead of controlling the government of Ahmadinejad, the parliament supports it, an issue that now is the topic of important debate inside of Iran.

## Legislative Techniques

The problems associated with the legislative process in Iran are not limited to opposition from non-elective bodies. The legislation itself is often ridden with technical weakness so that the ultimate products result in confusion for those who are in charge of applying them, creating a space for selective interpretations. In the corpus of Iranian law, there are numerous instances of technical faults, particularly in the realm of laws dealing with political and press offenses. Judges are able to apply their own political and personal views making use of the ambiguities that the relevant laws harbor. Even if we take into account the possibility of the repeal of sentences at higher levels of the judicial procedure, the initial verdicts can easily frighten the supporters of political progress.

One example is the Prohibition on the Instrumental Use of Women and Men by the Press Act of 1998. The fifth *Majlis*, under the domination of the conservatives, passed this law--one that suffers from serious technical defects. The law allows judges to define the term "Instrumental Use" according to their own political, factional and personal taste.

A similar problem exists in the realm of laws that deal with criminal offenses. The legislative system in Iran has made room for the approval of many violent punishments under the banner of notions of public order. But the reality is that, despite the severe and often humiliating punishments such as whipping, stoning to death, amputation of fingers, hands and feet, Iran still faces high rates of prostitution, adultery, drug addiction,

trafficking and so on. The rising trend of these offenses effectively proves the failure of the legislature in controlling social violence and makes the case that violent punishments cannot prevent offenses that find their roots in society. The same can be said of laws attempting to deal with financial corruption. The Intensification of Punishments for Fraud, Bribery and Misappropriation Act of 1991 contains a series of horrific penalties. Yet corruption has flourished under the current regime.

As for moral offenses, it is interesting to note that the number of women suffering from social ills has been on the rise. According to existing figures, 45 per cent of women who were discharged from prison in 1997 were re-arrested for offenses related to immoral conduct. According to a survey carried out in one of the districts of the city of Tehran, the average age of women and girls arrested for prostitution had fallen from 27 years in 1997 to 20 years in 1998 and the figures for suicides in the first nine months of the Iranian year 1377 (beginning March 21, 1998) showed an increase of 113 per cent compared with the similar period of the previous year.

The technical problem of ambiguity in laws is most evident in the area of civil rights. For instance, some laws have foreseen punishment for practicing legitimate civil rights of the citizens to criticize the government as described in Article 8 of the Constitution. According to this Article 8, "In the Islamic Republic of Iran, inviting others to do good, promotion of good deeds and admonishment of evil deeds is a public and reciprocal duty of the people and the state and the scope and conditions will be set by law." Yet Article 500 of the Islamic Penal Code says, "Whosoever undertakes propaganda against the Islamic Republic system of Iran or in support of groups and organizations that oppose the system in whatever manner will be sentenced to between three months to one year in prison." Of course, criticism cannot be viewed as propaganda against the political system, but since the law fails to offer a clear definition of what constitutes this offense, its provisions are often used to include press offenses in the category of counter-revolutionary and anti-state activities while political offenses, which are not defined in our laws, can easily be interpreted as actions against the state and entail dangerous consequences. Furthermore, the term "groups and organizations that oppose the system" is a broad term and can be interpreted in various ways. The same goes for the term "propaganda ... in whatever manner," which may include any criticism of the establishment. In short, the law has the potential of considering any expression of opposition as an offense regardless of whether there is subversive intent or not.

A good piece of legislation must seek to avoid these types of ambiguities. But in Iran these ambiguities have been made possible by the contradictions that exist within the Constitution itself as well the influence wielded by those who seek to maintain control of the political system. These ambiguities allow them to interpret the laws in ways that suit their immediate purposes. A good piece of legislation must be explicit in its purpose, which means that it must express its meaning in a clear way. Besides, it must essentially be compatible with the customs and needs of society. Laws should be derived from these needs and not merely imposed. In the end, society should not be forced to conform to laws, but rather, laws should conform to society. A successful law is one that people consider just and correct and as such, they tend to obey it without the need to use the force of the police and others. A good piece of legislation is one that responds to the needs and wishes of the people, otherwise, it will soon be relegated to the antique law books.

The existence of many laws containing heavy corporal punishments, laws which are out of touch with the wishes of the people, as well as laws which describe certain actions as illegal without giving a clear definition of their limits, have undermined the efficiency of the Iranian legal system. With these kinds of laws and a judicial system in which conviction is based on the knowledge of the judge and the selection of the mode of the application of the sentence, too, is put in his hands, it is difficult to expect fair dispensation of justice. The opening up of the country depends on a revision of those laws that impede progress.

## Recommendations

During the reform era, when a large body of laws was passed in contravention of the principles of the Constitution, and attempts to reverse the trend through amending them faced the opposition of the Guardian Council, a number of lawyers expressed the view that the basic principles of the Islamic Republic Constitution lack practical assurances.

Most lawyers believed that two articles of the Constitution foresee measures that prevent tampering with the principles of the Constitution. One of them is Article 94 which gives the Guardian Council the right to reject acts of the *Majlis* deemed against the Constitution and the second is Article 113 which makes the President responsible for the application of the Constitution. According to Article 113, "After the Supreme Leader, the President is the highest ranking official of the state and is responsible for applying the constitution and heading the executive except in areas directly under the Leader." Beyond these two measures, however, there are no courts of law or any other authority to handle cases that involve violations of the Constitution. In most other countries such authorities do exist. In Iran, making the President responsible for the application of the Constitution without the necessary instruments to act upon this responsibility is, to say the least, unusual. As a result, it is necessary to create a constitutional court in order to revive and apply the contents of the Constitution."

The fundamental question in Iran at this point is how can the Constitution act as a yardstick when its basic principles are routinely violated? Several articles of the Constitution, such as the principles of the separation of powers, innocence before conviction, freedom, defense of the right of the accused, the right of the people's representatives to investigate all aspects of the affairs of the state, responsibility before the people, councils, investigating the financial situation of high ranking officials, definition of political offense, guarantees of the freedom of expression for writers and so on have either been violated repeatedly or have received no attention. Clearly the legislature is the first body to pay attention to these problems.

However, as delineated above, even if elected legislators wish to amend the laws, they are likely to face the opposition of the Guardian Council, which holds the right of veto. Hence we return to the need for the revision of the Constitution itself. Generally, the position of the president has no power to act upon its responsibility to uphold and defend the Constitution. The complexities of the legislative procedure also prevent the *Majlis* from moving in the direction of amending obstructive laws. The revision of the Constitution must foresee the establishment of a constitutional court to deal with violations of the Constitution itself.

In any kind of conflict between the reformists and the supporters of despotism, the Constitution is often violated with impunity. For instance, Articles 84 and 86 of the documents emphasize the immunity of the members of the *Majlis*. Article 84 states, "Each and every member of the *Majlis* is responsible before the whole of the nation and has the right to opine on every domestic and foreign issue." Article 86 adds, "Members of the *Majlis*, in discharging their duties and in the expression of their views and votes enjoy full freedom and they cannot be prosecuted or arrested for views expressed in the *Majlis* or votes they have cast in discharging their duties as people's representatives."

On the basis of these provisions, it is impossible to sue arrest or warn members about the views they have expressed in the *Majlis*. But at the same time, the news of a series of summons to court for the members of the *Majlis* during a seven month period in 2002, assumed great prominence in the political columns of many papers. The summonses were so many and were issued so often that they have left the clear impression that they were issued on the basis of political and factional interests. Sadly, there were no mechanisms to test the constitutionality of these summonses.

In fact, since the opening of its term, the sixth *Majlis* of the Islamic Republic faced not only challenges



posed by the Guardian Council, but also problems created by the Judiciary. The Judiciary was hard at work to offer its own interpretations of certain articles of the Constitution in order to reduce the supervisory power of the *Majlis* to a minimum. The confrontation with the Judiciary is now approaching a climax over the interpretation of Article 90 of the Constitution which states,

whoever has a complaint against the activities of the *Majlis*, or the Executive or Judiciary branches may submit his complaint in writing to the *Majlis* and the *Majlis* is obliged to investigate the case and when the complaint is against the Judiciary or the Executive, question them about it and declare the results in the appropriate time limit and when the complaint is of a public nature, also inform the public of the results.” This Article was put to use when complaints were brought to Article 90 commission of the *Majlis* regarding to mass closure of newspapers and journals and the arrest of several journalist in 2000. The *Majlis* acted upon its duty in the case of the mass arrest of journalists especially since they were tried in closed courts and without a jury. The *Majlis* saw the arrests as contrary to the explicit intent of Article 168 of the Constitution A report by the Article 90 Commission of the *Majlis* calling for respect of the freedom of press faced strong attacks by the judiciary to the extent that the commission chairman, Hossein Ansari, accused the judiciary officials of failure to understand the legal status of the commission, adding, “The position adopted by the Tehran Prosecution Court regarding the legal and respectful report of the committee and the use of strong words and accusations showed that the Court and its officials have not correctly evaluated their legal and judicial relations with this commission (Quoted in Hayate-No, vol. 1, no. 195, 9 Bahman 1379 - 19 February 2001, p. 3).

He also referred to the Note to the Act concerning the operation of Article 90 and pointed out that according to the Note, officials are obliged to submit their written answer within one month to the commission and failure to do so, constitutes an offense and the offender is liable to between three months to one year in prison and suspension from his or her official post for a period between six months to one year. And if the complain needs further investigations, the committee can choose inspectors from among the members of the *Majlis* or outside experts and those in charge are obliged to cooperate with them. Thus, according to Article 90 of the Constitution and the explicit content of the law, the *Majlis* and the Committee are the highest court of the land in cases of complaints against the Judiciary, the Executive and the Legislative branches of the state and are responsible for their supervision. According to this law, even the President, who is the second highest ranking official of the state, is obliged to reply to the committee and even present himself before it if summoned.

Regarding the question put to the Judiciary about the arrest and punishment of journalists, Ansari said, “It is natural for the press and writers to face challenges by those in power and if they are to be easily suppressed by the ruling power, then there will never exist any free channels of criticism and analysis of information which form the bases of healthy politics and politicians. There is no doubt that the rationale for the press law and the litigation procedure for the journalists and writers and the order that trials are to be held in public and in the presence of a jury is to prevent the holders of power from aggression against those who wield the pen and to protect them against the ruling power so that the power cannot easily try and condemn the analysts and critics.” Sadly these very sane words did not moved the Judiciary, which continued to keep well-known journalists and political activists in prison and even imprison more of them.

The sixth *Majlis* was called the *Majlis* of reforms, though it faced factional, ideological and political pressure by certain institutions and could not amend laws it deemed contrary to constitutional guarantees. The body could not even act upon its supervisory duties because of the resistance of the Iranian judicial apparatus. The way the Iranian Islamic Constitution is being interpreted by the non-elective levers of power in today’s Iran will continue to create tensions as it caused the previous reformist government not to be successful in carrying out what they promised to the people. The truth is, under the constitution, a mechanism is made that places the elected bodies under the indisputable control of the non-elected bodies.

## Chapter Six: The Structure of the Executive

In the current political set-up of the Islamic Republic of Iran, the president is the second highest-ranking official of the state after the leader (Rahbar). But when the corpus of laws concerning the executive is surveyed, we find that the president cannot easily discharge his duties. According to Article 113 of the Constitution, “After the leader, the president is the highest ranking official of the state, is responsible for the implementation of the Constitution, and is the head of the executive branch except in areas which are directly under the leader.”

The duties of the leader are set forth in Article 110 of the Constitution and show the areas in which the president cannot act. Article 110 describes the functions and authority of the leader in following terms:

- Determination of the general policies of the Islamic Republic of Iran after consultation with the Expediency Council.
- Supervision over the proper implementation of general policies.
- To call for referendum.
- To hold supreme command over the armed forces.
- Declaration of war and mobilization of forces.
- To sign the order of appointment of the president after he is elected by the people. The competence of the presidential candidates must be verified before the election by the Guardian Council and in the first term by the leader, as to whether or not it meets the qualifications set forth in this law.
- To appoint, dismiss, and accept the resignation of:
  - a. The clergy members of the Guardian Council,
  - b. The highest judiciary official,
  - c. The head of the IRI Radio and Television Organization,
  - d. The chairman of the joint chief of staff,
  - e. The chief commander of the Revolutionary Guard Corps,
  - f. The commanders of all branches of the armed forces and the police.
- Resolution of the differences among and coordination of the activities of the three branches of the state.
- Through the Expediency Discernment Council, resolution of the problems of the system which cannot be resolved in normal manner.
- To dismiss the president by taking the interests of the country into consideration after the Supreme Court has given a verdict on the violation by the president of his legal functions or the disapproval of the president by the Islamic Assembly (*Majlis*).
- To pardon or mitigate the sentences of convicted persons within the scope of Islamic precepts, upon the recommendation of the Judiciary.
- The Leader may delegate some of his duties and discretion to other persons.

Interestingly these vast powers given to the leader did not exist in the original Constitution of 1980, when Ayatollah Khomeini was alive. In the 1980 Constitution the leader was not endowed with the task of determining the general policies of the republic in consultation with the Expediency Council. In fact, there was no Expediency Council and the task of coordination among the three branches was given to the president. The 1989 amendment to the Constitution vastly expanded the powers of the leader, who is only indirectly elected by the members of Council of Experts (elected by the people after vetting by the Guardian Council).

In view of the vast powers of the leader, the president of the Islamic Republic, as the head of the executive branch, has a heavy load of duties with limited powers. In general, the president is responsible for the implementation of the Constitution. He is also responsible for management of the affairs of the state in

safeguarding the national security and the administration of foreign relations in order to preserve the independence of the country. In both areas, he faces numerous challenges by parallel entities which may well belong to different factions of the establishment. This problem did not reveal itself so long as the president of the republic operated in tandem with the leader. However, with the election of the reformist Mohammad Khatami as president, the question of presidential powers to execute desired plans came to the fore. The fact that so many of Khatami's plans to reform the institutions of the Islamic Republic were blocked brought forth the existence of the problem of "dual executives" that led to a deadlock in the Iranian political system. To understand the problem, we need to look at the Iranian Constitution again and the tensions that exist within it regarding the president's responsibilities and powers.

According to the Constitution, the president of Iran is a directly elected official who serves for a term of four years and can stand for one additional term. Article 115 of the Constitution states that the president must be "elected from among religious and political personalities with the following qualifications: Iranian origin, citizen of Iran, capable of managing the state with a good record of trustworthiness and virtue, religious and devoted to the foundations of the Islamic Republic of Iran and the official religion."

In addition, all candidates for the presidency must be approved by the Guardian Council on the basis of Article 99. And since a 1995 act has given the Council the right of absolute supervision, the Guardian Council must approve the competence of all candidates before they enter the presidential campaign. For the seventh presidential election since the revolution (May 23, 1997), the Guardian Council only approved four candidates to stand for election. The candidates included three candidates from the conservative religious-political faction and one candidate from the reformist religious-political faction. In fact, the law gives the Guardian Council the power to stop candidates from competing in the presidential election in the first place, as it does for *Majlis* elections. Article 115 of the Constitution specifies that the president must be chosen from among religious and political men, and as such, secularist candidates are barred from standing.

The president is the head of the executive branch and leads a cabinet of ministers. Article 133 of the Constitution stipulates, "The ministers are chosen by the president and are introduced to the *Majlis* for a vote of confidence. With the change in the term of the *Majlis*, it is not necessary for the president to seek new votes of confidence. The number of the ministers and their duties are to be set by law." Article 135 adds, "Ministers keep their positions unless they are dismissed or after a vote of censure or lack of confidence by the *Majlis* obliges them to leave office." Article 136 gives the president the power to "dismiss ministers but in this case, he must request new votes of confidence of the *Majlis* for his new ministers and if after receiving the vote of confidence, half of the cabinet changes, the president must again seek votes of confidence for the cabinet." Article 137 specifies, "Each of the ministers is responsible before the president and the *Majlis* for the affairs of his own department and in issues approved by the cabinet, he is also responsible for the activities of the other ministers." Article 138 states,

In addition to instances in which the cabinet or one of the ministers is called upon to formulate the executive orders for the application of legislated laws, the cabinet has the right to approve such orders and regulations in order to ensure the application of laws by government departments and organizations. Each of the ministers is also able to issue and approve orders and regulations within the scope of his duties in order to act upon legislated laws and cabinet circulars but these orders and issues must not contradict the letter and spirit of the law. The cabinet may delegate some of its duties to commissions composed of a number of ministers and the decisions of such commissions must be applied within the laws and upon the approval of the president. Such approvals and regulations and the decisions of the said commissions are sent to the Speaker of the *Majlis* and in case he finds them against the law, he returns them to the cabinet stating his argument.

According to Article 139, "Transfer of state and public property or putting them up for arbitration and donation must have the approval of the cabinet of ministers and the *Majlis* must be informed of this. In cases

that involve a foreign party to the case and in important domestic issues, the *Majlis* must approve the case. The important issues are decided by law.”

According to Article 140, “investigation of charges against the president and his vice presidents and ministers in cases involving ordinary offenses are tried in ordinary courts of law upon the *Majlis* being informed of the cases.” Article 124 gives the president the right “to choose vice presidents for himself and the first vice president will manage the cabinet and is responsible for coordination of the activities of other vice presidents.” Article 129 of the Constitution states that “Signing conventions, agreements, letters of understanding and contracts between the government of Iran and other governments as well as documents involving international unions rests with the president or his legal representative upon the approval of the *Majlis*.” The president is also “responsible for the planning and budgeting and administrative and recruitment functions of the government departments (the civil service) and may delegate this responsibility to other person or persons.” According to Article 128, “Ambassadors are appointed upon the recommendation of the foreign minister and approval of the president who also signs the letters of credentials of ambassadors and receives the letters of credentials of foreign ambassadors.”

In theory, the executive branch of the government operates under the president and those in charge are responsible to the president who, in turn, is responsible before the *Majlis* in line with the power of the latter body to check the activities of the executive branch. In practice, however, the president is faced with severe impediments in dispensing with his responsibilities.

For instance, according to Article 188 of the Constitution,

In cases in which at least one fourth of the entire membership of the *Majlis* question the president, or any of the members questions a minister regarding any of their duties, the president or the minister is obliged to present himself before the *Majlis* and answer the question and the answer cannot be furnished later than one month after the question is tabled in the case of the president or ten days in the case of a minister unless there is a valid reason for the delay as the *Majlis* views it.

According to Article 122, “The president is responsible before the nation, the leader and the *Majlis* for the duties and functions which are incumbent upon him according to the Constitution or other laws.”

Article 89 of the Constitution provides that “Members of the *Majlis* may question and table a motion to censure the cabinet or any of the ministers and such a motion can be tabled only when at least ten members have signed it. The cabinet or the minister facing a motion of censure are/is obliged to attend the *Majlis* no later than ten days after the motion is moved and request the *Majlis* for a vote of confidence. Failing to attend the *Majlis*, the members who have moved the motion will explain their reasons and if the *Majlis* decides, a vote of confidence will be taken. If the *Majlis* does not express its confidence, the cabinet or the minister will be dismissed. In any case, the ministers who have been censured and dismissed cannot join the cabinet formed immediately after the cabinet of which they were members. ... In case at least one third of the members of the *Majlis* move a motion of censure against the president regarding his performance as the head of the executive and administrator of national affairs, the president is obliged to attend the *Majlis* no later than one month after the motion is moved and offer his explanations. If following the debate by members supporting and opposing the motion, a majority of two thirds of all members of the *Majlis* vote in favor of incompetence of the president, the case is conveyed to the leader as set forth in Section 10 of Article 110 of the Constitution.” This section gives the Leader the right to depose the president after the *Majlis* or the Supreme Court has reported his incompetence or misconduct.

Within this structure, the president has been left with few powers and a large number of responsibilities. As mentioned, he is responsible for the implementation of the Constitution and safeguarding the national security and the administration of foreign relations in order to preserve the independence of the country. In

both areas, he faces numerous challenges by parallel entities which can belong to a different faction of the establishment. As a result, he may have to spend all his energy in controlling artificial crises and tensions created for the purpose of undermining his authority.

## The Gap between Responsibilities and Powers

Reformist efforts made the gap between presidential responsibilities and power quite evident. Every time the anti-reform forces engaged in unconstitutional activities, the inability of president Khatami to dispense with his responsibilities and implement the Constitution became visible. Breaking up public gatherings, assaults on newspaper offices, assaulting and insulting cultural and political personalities and so on, are among the measures used by the so-called pressure groups. In the absence of the delegation of the control of the law enforcement forces to the interior minister, president Khatami and his government were deprived of the possibility of using these forces to secure the safety and freedom of the people against those who are bent on creating tension.

A specialist comments on the imbalance between the president's powers and responsibilities in the following words: (The Constitution was amended in 1989)

Unfortunately, due to the amendment of the Constitution, the president did not receive sufficient power to discharge his duties and this needs revision. Nonetheless, even now, the president has more power than he uses. He is not only the head of the executive, but is also in charge of upholding the Constitution ... I ask myself why the president should not have the power to prevent the application of laws that run against the Constitution? This right has been withdrawn by an ordinary piece of legislation ... which says that if the President refuses to apply a law, the Speaker can do so in his place. This law is against the Constitution and against the logic of legislation ... When the president is responsible for the application of the Constitution, refuses to apply a bad law, he must inform the *Majlis* and if the *Majlis* did not accept his argument, the Guardian Council must decide ... Even if the president's interpretation of the Constitution is his own, and if this is not the same as that of the Council, he must at least have the right to express his opinion and ask the *Majlis* to review a law ... (Interview with Dr. Nasser Katouzian, *Vekalat* monthly, No. 0 Azar 1378, p. 8)

This view is confirmed by the oath of office taken by the president that again raises the question as to how he can act upon his oath when he has little power to do so.

The presidential oath contained in the Constitution is as follows:

In the Name of Allah the Beneficent, the Merciful.  
Before the Holy Koran I swear to God Almighty and undertake upon my human dignity to protect the sanctity of Islam and safeguard the Islamic Revolution of Iran and the essentials of the Islamic Republic, to uphold the trust laced in us by the nation as a just trustee, to observe piety and honesty in the discharge of my functions as a representative, to remain always faithful and true to the independence and exaltation of the country, protection of the rights of the nation and service to the people, to defend the Constitution, and to uphold the independence of the country and the freedom and interests of the people in thought, word and deed..."

Another area of policy making which is traditionally entrusted to the head of the executive branch is the area of foreign relations—usually discharged by a foreign ministry. In the Islamic Republic, this responsibility is divided among various entities. Recently, the foreign minister explained the situation in the following terms:

... Not all works are under the foreign ministry. The central position of the ministry in foreign policy

has not been established. .. The foreign ministry tries to establish its position but first, we have to show that it is in charge of these responsibilities and I think the coming parliament may help us solve this problem and establish the foreign ministry as the place in charge of foreign relations... These are the problems of the foreign ministry and there is no problem except unauthorized interference and the lack of coordination among organs active in this field ... (“Avval bayad sabet konim ki motevali e siyasat khareji hastim” (We must first prove that we are in charge of foreign policy), Interview with Foreign Minister Kharazi, in *Asr-e Azadegan Daily*, Vol. 1, No. 133, Esfand 1378)

On the whole, there are countless legal impediments before the duties of the president and organs under his control. In the domestic area, when the question of the realization of political development and respect for legitimate freedoms is concerned, the president has no control over the law enforcement forces. In foreign policy, deciding the main pivots of policy issues is not within the scope of his authority. In upholding the Constitution, he has few instruments to carry out his responsibility. The Radio and Television, which are legally under the state and the most important media in Iran, are out of his hands.

The result is that the forces opposing democracy use these vacuums to create obstacles before his policies, they plunge the country into tension and, as at least one analyst had noted,

The President and his supporters who are concerned about the existing calm and security and wary of violent reactions and intensified suppression of democracy and establishment of a full and violent despotism, avoid taking any initiatives in institutionalization of freedom and the individual and social rights of the nation and reforms in society. Besides, there is the danger that with the excuse of having given the little freedom gained by the insider groups, they may stop the minimum rights which opposition and independent forces have and put them under extreme isolation and suppression (Habibollah Peyman, *Gahnameh*).

The structural weaknesses of the executive branch are such that a president, when he is addressed by those whose Constitutional rights have been violated, faces a difficult choice. The reaction of President Khatami to such events as serial murders, closure of the press, arrest of journalists and political activists affiliated to the reform faction, the events at the University of Tehran, followed an oscillating path which is the result of the legal and structural impediments he faces.

## Contradictions

The minds of the pressure groups are fed by religious and cultural entities that do not accept the concept of a “republic” next to the epithet “Islamic,” describing this as sacrilege. Ayatollah Mesbah Yazdi, one of the leaders of the opponents of reforms, once said:

There are those who, unfortunately because of weakness of their religious faith or the influence of infidel culture, think that the concept of the Islamic Republic is composed of two parts: Republic and Islam and today, we hear such words from those whom we never expected to utter such a view. ... Some have become so impudent as to say that if the Islamic part runs against the Republican part, the latter takes precedence! ... The choice of the term republic was to reject the form of monarchic system and not that kind of republic which is current in the West, the type of democracy in which everything depends on the will and whim of the people. Our republic is a republic whose aim is Islam, not that we have a republic next to Islam and as a separate objective because this would constitute infidelity. The term republic is just the frame which, in this present age, has been chosen for the realization of the rule of Islam and has no essence ...” (“*Gharar dadan-e hadafi be onvan-e jomhuri dar کنار eslam shirk ast*” (Setting a goal called the Republic next to Islam is sacrilege) in *Aftab e Yazd daily*, No. 296, Bahman 1379, p. 2)

Apart from such views expressed by religious authorities, the format of the Constitution itself suffers from

a contradiction born out of the tension between modernity and traditionalism. Some experts have spoken of the “duality of government” in Iran.

For instance, in the amendment to the Constitution of 1989, the term Guardianship by the *faqih* was changed into “Absolute Guardianship by the *faqih*.” This gave the Leader a position above all laws. An expert explains the contradiction:

... It is not logical to say that we have a Constitution which defines *valayat-e faqih* and then we say in the same document that he is above that Constitution. This has no logic ... and presents an ambiguity ... If we were to discuss the Constitution from a specialist’s point of views, we would say that our Constitution does not follow a logical argument. The draft of the Constitution (in 1980) was prepared with a logical argument and it did not contain the concept of *valayat-e faqih*. This was added by the Experts Assembly (which discussed and ratified it). Then that Constitution was never viewed as whole and part of the problems we face stem from this ambiguity within the document ... Today, our government is formed on the basis of the decision of the voters, but when it is formed, it lacks sufficient internal consistency. It has numerous centers each of which wants to exert its own idea ... The inconsistency within the Constitution deprives governments of the necessary consistency. The experience of past ten years shows that such inconsistencies cannot continue within the system. On the one hand, some parts of the system are not answerable at all as is ordained in a republican system, and other parts are answerable but lack sufficient authority. In fact, in any country of the world, when a cabinet is formed, it assumes full power and solves the problems of economic, cultural, military and security and judicial natures. The government assumes the power of the country in order to direct society toward a given objective. In our country, when a cabinet is formed, it has no more than 25 per cent of the needed power, and it is interesting that the rest, too, is not centralized elsewhere ... I believe that the first step in the direction of political development must be the resolution of these contradictions (Interview with Hossein Maraashi, acting secretary general of Kargozaran party, in Aban weekly, Vol. 3, No. 106, Azar 1378, p. 4).

It was in search of such a solution that in the year 2000, a conference announced that soon, the *Majlis* would enact a law in order to bring the president’s powers in line with his responsibilities. At the conference, several important issues were raised. Among them was the point that in the 1980 Constitution, the president was made responsible for the coordination of the activities of all three branches of the state, but in 1989 amendment, this was transferred to the Leader, though defense of the constitution remained with the president. Also, in the amendment, article 57 was revised to read: “The branches of power in the Islamic Republic of Iran include the legislative, the executive and the judiciary powers which under the supervision of the absolute guardianship of the *faqih* and the Imam of the *ummah* are exerted according to the following articles of this Constitution. These branches are independent of each other.”

In the previous constitution, the branches were separate but the connection between them was established by the president. What is certain is that the responsibilities given to the president in article 113 and the oath of office he task according to article 121 cannot be discharged without the authority which he currently lacks. A recent instance has been “the unprecedented violation of the Constitution since the revolution in the past months which included extensive closure of the press, harsh treatment of thinkers and writers and journalists and their imprisonment” (“*Eslahe ghanoon ekhtiarat e raiis jomhuri*” [Amending the discretion of the president act] in Asr-e Ma weekly, Vol. 7, NO. 1999, Bahman 1379, p. 2) while the president did not adopt a serious approach in any of these cases.

## Women’s Participation

In the presidential election of the reformist president Khatami, the Iranian women played a decisive role. Having suffered the consequences of a harsh reading of religion, they opted for a more liberal interpretation

of the religion as it was to affect political decisions. They placed their hope in a future in which they expected the rule of law to govern the life of the nation.

Because of Khatami's emphasis on the need for extensive participation of women and their appointment to higher levels of decision-making, women supported him in an unprecedented way. All the same, by the end of his presidency, we saw little sign of the presence of women in key positions. Despite the extensive presence of women at universities, the scope for the political participation of half of the population of Iran in policy making is almost negligible. Statistical information shows that the traditional view still dominates the executive branch of the state to the extent that during these four years, we see little signs of women's participation. That attitude has barred women from entering important centers of decision-making. In the corpus of the laws, there is no impediment to appointing women to such posts as ministers, deputy ministers, director generals and chief of offices, but the impediments stem from arbitrary views of those in charge.

The following table is taken from Publication No. 307 of the Office of Information Statistics and Processing of the Administration and Recruitment Office for the Iranian year 1378.

**Distribution of management posts in government organs by gender in 1378**

| Post   | Women | Men and Women | % Women |
|--|-------|---------------|---------|
| Deputy Head                                      | 18    | 1312          | 1.4     |
| Director general and similar posts               | 45    | 3192          | 1.4     |
| Manager and similar posts                        | 339   | 8229          | 4.1     |
| Deputy director general and similar posts        | 134   | 4143          | 3.2     |
| Deputy manager and similar posts                 | 149   | 3941          | 3.8     |
| Head of group or office and similar posts        | 1738  | 28172         | 6.2     |
| Deputy head of group of office and similar posts | 606   | 8970          | 6.8     |
| Total  | 3029  | 57959         | 5.2     |

### Recommendations and Hopes: The Need to Revise the Constitution

It was natural for the reformist parliament to try and create the necessary environment to discuss the conflicts and contradictions within the Constitution. The Constitution states that coordination among various branches of the state is essential, but the branches are not in a position to act upon this order. Every center of power ought to demand its right in running the country.



Another institution in need of revision is the Guardian Council. Without changes to its structure and function, there is little hope for reform at large. In fact, among the areas in which the Constitution seems the least consistent are those relating to this entity. Lawyers who took part in preparing the first draft of the Constitution have reported:

... In the first draft which was written by a legal expert, there was no ambiguity. It was a clear legal document which would not entail conflict. The conflict between the Council and the *Majlis* which appeared later was the result of changes made to that draft. In the first draft, the Council was the protector of the Constitution, and a judiciary and not a political Council ... In fact, to decide if a piece of legislation is against the religion or is not is a judicial act and not a political one. Questions such as the way a law is to be implemented, how various laws are to be reconciled, and what the spirit of the law says, are judicial and not political questions. Thus, in the first draft, the Council was to be a 15-member board with 5 judges, 2 professors of law, 2 attorneys and 6 clergymen to function as a constitutional court. And the duty of the Council was not to receive all the acts of the *Majlis* and scrutinize it. The procedure would be for the prosecutor general or the president or the head of the supreme court considered a piece of legislation contrary to the Constitution, or one of the marja's viewed it as being against religious tenets, they could bring a case to the Council and the Council would investigate the case, provided that no more than one year had elapsed since the passage of the act, and if viewed it as being against the Constitution or the religion, it would simply repeal it without sending it back to the *Majlis* and getting involved in a dispute which later necessitated the creation of the Expediency Council ...

The Constitution can be revised and amended according to its Article 177. The road of reform will never be an easy one and but one beset by numerous legal obstacles. To remove these, it is necessary to update the Constitution. In particular, correcting the role of the Guardian Council will give greater authority as a judicial entity charged with the duty to protect the Constitution, without being involved in political and factional disputes. This will give the Council a status on par with similar institutions in the rest of the world and move us one step closer to an equitable system. In spite of all this, currently and with the arrival of Mr. Ahmadinejad government, it is not possible to predict the political future of Iran, particularly in the short term.

The End



