



Iranian Bar Associations: Struggle for Independence

IHRDC Legal Commentary By
Mohammad H. Nayyeri

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Photograph:

Pictured on the front cover is prominent Iranian lawyer and human rights defender, Nasrin Sotoudeh, exiting the Headquarters of the Central Bar Association in Tehran on May 29, 2011. Sotoudeh, handcuffed and accompanied by prison guards in the shot, was brought from Evin prison to attend a hearing concerning her attorney's license.

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Introduction

The right to defence is recognised by Iranian law and prescribed in the Constitution of the Islamic Republic of Iran (IRI). Article 35 of the IRI's Constitution stipulates: "Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel." Other laws, too, such as Iran's Law of Attorneyship and even the Iranian Criminal Procedure Code, have stipulated the right to counsel and defence.

According to internationally accepted standards, not only is an individual guaranteed the right to counsel and a defence, but those services should be provided through an *independent* legal profession. The preamble of the UN Basic Principles on the Role of Lawyers¹ reads, in pertinent part:

"Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession"

Moreover, referring to "self-governing" professional associations which shall be able to "exercise its functions without external interference", article 24 of the Principles stipulates that:

"Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference."

In addition, according to the Law of Independence of the Iranian Bar Association, the Bar was given independence since 1953. Article 1 of the said law stipulates: "[t]he Bar Association is an independent body with a legal personality...". The Bar Association has struggled to exercise that right for the last 60 years. However, especially following Iran's 1979 Revolution, the restrictions made by the IRI on lawyers and their professional associations have damaged their independence and consequently threatened people's right to defence. The purpose of this article is to examine the fluctuations of the Bar Association in Iran and its developments since it was formed.

The Iranian Bar Association is comprised of 22 different associations—and the Central Bar Association in Tehran is the largest and primary one. These Iranian Bar Associations have undergone different stages of development since their formation and this commentary will examine those stages in chronological order. Therefore, this article will first offer a glimpse into the formation of the Bar Association and its independence. Then it will address the period of the 1979 Revolution and the treatment of Bar Associations and attorneys by revolutionary authorities. Next, it will survey the Laws and Regulations adopted to limit the independence of the Bar Associations and increase the control of the Judiciary. In addition, the creation of a new breed of dependent lawyers (legal advisors) will be explored. The article will analyze the period following the disputed June 2009 Presidential election in Iran and the new Bill of Attorneyship which has been prepared by the Judiciary and aims to effectively end the independence of the legal profession. Finally, this article mentions, in brief, the

¹ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; available at: <<http://www.unhcr.org/refworld/docid/3ddb9f034.html>> accessed May 24, 2012.

latest developments concerning a judicial order that ordered the closure of the Union of Bar Associations.

Establishment of Independence (1911 – 1979)

Prior to the Constitutional Revolution [*enqelāb-e-mashruteh*] in Iran in 1906², claims were brought before the clergy, who were not bound to any law and procedure, save for their own self-governing Shari'a rules and Islamic jurisprudence. Even after the emergence of modern laws in Iran, the newly formed judiciary kept functioning as Shari'a-based courts. In 1866 the compilation of modern laws through translation of foreign laws began. Subsequently, the modern courts were established and the judges and public prosecutors began their careers. In 1911 the First Charter of Attorneyship was adopted which mandated that attorneys take part in qualification examinations in order to practice the law.

However, attorneys did not have their own association until November 11, 1930 when the then Minister of Justice (Ali Akbar Dāvar) gathered attorneys together and the first core of the Bar Association was established. In those days, attorneys and their Association functioned under the supervision of the Ministry of Justice and a Department in the Ministry (*edāreh-ehsāiyyeh*) was responsible for the issuance and renewal of attorney's licenses. Six years later the Law of Attorneyship (14/2/1937) was adopted and, pursuant to article 18, the Bar Association was granted legal personality:

Article 18- "The Bar Association is an organization with legal personality which is subject to regulations and management of the Ministry of Justice but independent in its incomes and expenses."

Nevertheless, according to article 21 of the same law, the Board of Directors of the Bar Association should be selected by the Ministry of Justice—and the Chairperson of the Bar might be selected from the judicial or administrative staff of the Ministry of Justice. However, it was the first time that a law referred to the Bar Association as an "independent" entity, albeit only on the narrow issue of "incomes and expenses". 15 years later, the Association's powers graduated from partial financial independence to full independence of the institution.

Following the establishment of the Bar but prior to the adoption of the law of independence, George Mouris, the then-President of the International Bar Association, visited Iran and in a conversation with Mr. Hashem Vakil, the Chairperson of Iran's Central Bar Association, asked about the selection of attorneys and issuance of their licences in Iran. When he heard that the Justice Ministry is the body responsible for the selection of lawyers, he replied: "So, you are still minors who need a guardian. Then I will not talk to you until you become mature"—an obvious, and chiding, reference to the fact

² During the early 1900s the revolutionary forces raised to save the country from government corruption and foreign manipulation and to that end saw the only way in making written code of laws. This uprising and its following events was later called the Constitutional Revolution [*enqelāb-e-mashruteh*]. The efforts of freedom fighters finally bore fruit during the reign of Mozaferedin Shah who ascended to the throne in June 1896. In the wake of the relentless efforts of freedom fighters, Mozafar o-Din Shah of Qajar dynasty was forced to issue the decree for the constitution and the creation of an elected parliament (the Majlis) on August 5, 1906. As a result of this, royal power was limited and a parliamentary system was established. Source: <http://www.iranchamber.com/history/constitutional_revolution/constitutional_revolution.php> accessed June 22, 2012.

that the Bar still lacked independence.³ This answer weighed heavily on the directors of the Bar Association and encouraged them to engage in a more ardent struggle for independence.

In 1953, the pursuit of these attorneys for greater independence succeeded and Dr. Mohammad Mosaddeq, the then Prime Minister of Iran who was a lawyer himself, signed the “Bill of Independence of the Iranian Bar Association”—on the basis of the special legal authority bestowed to him by Iran’s Parliament. On February 26, 1953 the Minister of Justice noticed the law (hereinafter the “Law of Independence”) to the then Chairperson of the Bar (Seyed Hashem Vakil) and the era of independence commenced. Thereafter, that day was commemorated as the “Day of Independence of the Bar” and the “Day of Attorney” which has since been annually celebrated by Bar Associations and attorneys in Iran.

By order of the Law of Independence, the supervision of the Government and Judiciary over the Bar Association was terminated and the Bar was deemed independent. Article 1 of the Law of Independence stipulates:

"The Bar Association is an independent body with a legal personality and shall be established where the Provincial Courts are established. It shall consist of a General Assembly, Board of Directors, Attorneys' Disciplinary Prosecutor Office and Disciplinary Courts."

Accordingly, attorneys achieved the right to elect the Bar Association’s board of directors through direct ballot; and the board of directors, in turn, appointed the Chairperson of the Association. In addition, under the Law of Independence, the Bar Association became the only body responsible for confirming the legal qualifications and competence of the candidates running in the Board’s election. For the next 25 years, until 10 June 1978, the date of the last election of the Board before the 1979 Revolution, twelve main members and six substitute members of the Board were regularly elected without any interference from the Judiciary. Similarly, the Law of Independence also gave the Bar Association an exclusive role in granting and revoking licenses to practice law without the interference of the Judiciary; and, Attorneys’ Disciplinary Courts and Prosecutor’s Office were deemed responsible to deal with professional faults of attorneys. Finally, as it is still the case, the attorneys should pay all of the Bar Association’s expenses and the association did not receive any financial aid from the government.

To preserve the independence of attorneys and prevent the Judiciary from prosecuting attorneys, articles 15 and 16 of the Law of Independence stipulated:

Article 15- "If any municipal or provincial judges or prosecutors learn of any prosecutable offences committed by any lawyers, they must inform the Disciplinary Prosecutor's Office for Lawyers of the matter in writing. If the said Prosecutor's Office determines that the matter warrants prosecution, it should issue a bill of indictment and refer the matter to the Disciplinary Court for Lawyers or present its opinion to the Prosecutor with corroborative evidence. In the event the Prosecutor is not satisfied with the opinion of the Disciplinary Prosecutor's Office for Lawyers he shall refer the matter directly to the Disciplinary Court for Attorneys".

Article 16- "When the Minister of Justice, for any reason, determines that an attorney is prosecutable, providing the evidences, he shall refer the case to the Disciplinary Court for

³ From the speech of Mohammad Jandaghi, the former President of the Central Bar Association, at the First National Congress of Lawyers in Isfahan, May 5, 2011 <<http://www.caspianlawyers.com/news-notice/39-iranbar-news/1290-news.html>> accessed June 22, 2012.

Attorneys; and, then, if he is not satisfied with the decision of the said Court he shall apply for appeal.”

What is notable in these articles is that the judicial authorities only have the right to refer the case, or apply for appeal to the Disciplinary Court for Attorneys. Article 17 was another powerful means to prevent the Judiciary from revoking Attorneys’ Licenses:

“Since this law comes into force, no attorney can be suspended or barred from the career of attorneyship unless in accordance with a final decision of the Disciplinary Court [for Attorneys].”

The aforementioned Law guaranteed the protection of attorneys against interference and attacks from the State and consequently safeguarded the people’s right to defence. Clearly, the providers and encouragers of the Law realized that attorneys could not perform their crucial role in the justice system without independence.

After the coup d’état of 19 August 1953 which resulted in the collapse of the legal government of Dr. Mosaddeq, a Commission consisting of Members of Iran’s Senate and Parliament was established to re-examine the laws adopted by Dr. Mosaddeq including the “Law of Independence of the Iranian Bar Association”. The Commission ratified the Law, with some minor changes, on 24 February 1955 and later the first election of the Board of Directors of the Bar was held under the new Law. Since then, at least until the 1979 Revolution, the Bar Association functioned as an independent body, even becoming a member of the International Bar Association (IBA) in 1968.

After the Revolution (1979 - 1997)

Following the 1979 Revolution, waves of Islamization and revolutionizing institutions hit all parts of society including the judicial and legal system. The idea of the rule of Islamic Shari’a and re-establishment of Shari’a courts was raised by revolutionary forces and hardliner clerics, and led by Ayatollah Beheshti, the then Head of the Judiciary. The hardliners perceived the Bar Association and lawyers as a form of opposition to their fundamentalist ideas and subsequently closed down the Bar Association and arrested and imprisoned the majority of the members of the Board of Directors. They also revoked the licenses of a substantial number of lawyers under the pretext of “purging” the lawyers—a process whereby licensed attorneys, whom revolutionaries deemed to be espousing subversive ideas harmful to revolutionary ideals, were stripped of their licenses to practice law. The Bar was eventually reopened on account of international pressure, but for the next 18 years the election of the Board of Directors was stopped and the Bar was directed by a Supervisor who was not elected by attorneys but appointed by the Judiciary.

The last round of elections of the Bar Association’s Board of Directors that would occur before the 1979 Revolution was held on June 10, 1978—in the midst of public protests and struggles against the Pahlavi Regime. Hassan Nazih was elected as the President of the Bar Association. Two years later, on June 10, 1980, attorneys were preparing for the 20th round of the election when the Revolution Council—which functioned as all three Powers (Legislature, Judicature, and Government) of the Revolution—adopted the Law on Purging the Bar Association and forbade the holding of an election until the end of the purging process. According to this law:

“In order to purge and cleanse the Bar Association, the Supervision Council of the Ministry of Justice shall be authorized to suggest a commission composed of five attorneys to be appointed by the Revolution Council of the IRI; and until the full purging no further election of the Board of Directors may be held; and the current Board of Directors must keep their legal authorities.

Note 1- The Commission shall perform its duties within a period of six months. Other laws in contradiction to the current Law shall be nullified.

Note 2- The Crimes and offences which contradicts the purging are the same as stipulated in the Law of Purging the Government Employees adopted by the Revolution Council.”

Nevertheless, after the Islamic Consultative Council (Parliament) was established in February 1981 following nationwide elections, as well as the formation of a Supreme Council of Judiciary under the new Constitution, the aforementioned law was never implemented and a Commission was never established. Despite this lack of implementation, the election still was not held and the Revolutionary Court took over the duties of the planned commissions. While article 17 of the Law of Independence of the Bar Associations stipulates that no attorney can be suspended or barred from practicing law without a final decision of the Disciplinary Court for Attorneys, the licences of 141 attorneys were revoked on the basis of the application of the Public Prosecutor of the Revolution, and with the decision of the Revolutionary Shari’a Judge. The disbarments were based on accusations of supporting or otherwise having ties to the Pahlavi Regime and its security forces, or maintaining ties to perceived anti-Revolutionary ideologies such as Baha’ism, Zionism, Communism, or Imperialism and were implemented on these three dates over a roughly six month period:

- 1- On 18 June 1983 the Licenses of 57 attorneys were revoked
- 2- On 30 August 1983 the Licenses of 32 attorneys were revoked
- 3- On 13 December 1983 the Licenses of 52 attorneys were revoked

Previously, some Directors of the Bar Association, including Abdolhamid Ardalan (the then Chairperson of the Central Bar Association) and Dr. Mohammad Taghi Damghani had been arrested. In another event, the Bar Association was evacuated from the third floor of the Palace of Justice and its belongings and documents were thrown into the yard. Consequently, most of the Directors of the Bar fled the Country and the Board of Directors could not perform its duties and protect its members. Indeed, all functions of the Bar, including the enforcement of disciplinary proceedings to regulate attorney malpractice and the provision of legal aid, was effectively stopped in practice.

It was four years later that the issue of the functioning of Bar Associations was considered by the Supreme Council of the Judiciary and it was decided that the election of the Board should be held. In this regard, several attorneys were invited to a session of the Council on May 7, 1984 and, instead of planning the election, unexpectedly, Goudarz Eftekhar Jahromi⁴, one of the attorneys present in the session who at the time was also a member of the Guardian Council, was appointed as the Supervisor of the Bar Association and the era of supervision of the Judiciary over the Bar Associations in Iran began.

⁴ Goudarz Eftekhar Jahromi has served in several political, academic and legal positions simultaneously in the IRI. He was, inter alia, appointed as the member of the Guardian Council (1980-1992), the Dean of Shaheed Behesht (formerly *Melli*) Law School (1979 until the present), the Head of the International Legal Services Bureau, and the Head of Iranian Lawyers at the Iran-US Claims Tribunal in The Hague. Recently, following the election of the Board of Directors in March 2012, he was again elected to be the Chairperson of the Central Bar Association.

Although it resulted in a reopening of the Bar Association, the appointment of Jahromi in this manner was a clear violation of the Law of Independence, according to which the Chairperson of the Bar should be a member of the Board of Directors and elected by the vote of other members (art. 5). Moreover, the Chairperson should meet the conditions set out in the same law, such as having practised a minimum of ten years as an attorney (art. 4). However, Mr. Eftekhar Jahromi had received his license just less than 5 years earlier (July 5, 1979) and therefore did not satisfy the requirement. Despite this seeming ineligibility, Jahromi chaired the Bar Association for the next fourteen years. Given his numerous outside engagements however, he could not devote much time to the Bar and his deputy, Davoud Fatemi, performed the bulk of the Chair's duties.

During the period after the Revolution, in the vacuum of law and revolutionary radicalism that was pervasive at the time, basic rights of accused persons (such as the right to counsel) were denied and attorneys strained to exercise their professional duties. During the first decade after the Revolution, for example, some court branches, particularly the Revolutionary Courts, used to put a sign at their doors that read: "We do not accept attorneys". On other occasions, as still applies, they might refuse to grant attorneys access to their clients or the dossier. It was in fact believed that attorneyship was an unnecessary institution which would merely create doubts and ambiguities in judicial cases and bother the judge.

In such circumstances the independence of the Bar was weakened in practice and as a result the Bar could not protect its members nor protest against the injustice and mass violations of human rights carried out, often gratuitously, in the name of Islam and the Revolution. However, the independence of the Bar survived in theory, namely in the Law of Independence. Moreover, the efforts undertaken by attorneys gradually changed the treatment of Courts and they accepted defence lawyers, at least in court cases for ordinary crimes, i.e. crimes other than those falling in the jurisdiction of Revolutionary Courts such as crimes against national security.

In 1990, the Bill of "Selection of Attorney by Parties to a Lawsuit" was drafted and proposed by 84 Members of Parliament which played an important role in the revival of the role and function of attorneyship in Iran. According to the Bill all courts and judicial bodies were obliged to accept lawyers and cooperate with them. In a general meeting of Parliament on December 26, 1990, Ghasem Sho'leh Sa'adi⁵—one of the drafters of the Bill who was a lawyer himself—stated: "in some of the Courts and Prosecutor's Offices, such as the Revolutionary Courts and Prosecutor's Office, it happens that the attorneys are not accepted. This practice is against the Shari'a rules and the Constitution." Seyed Hossein Mousavi Tabrizi was another MP who spoke in favor of the Bill and, referring to international criticisms, declared the bill to be in the interest of the IRI Regime:

"I used to be the Head of the Revolutionary Courts and Prosecution Offices. I believe that, if not 100 percent, more than 90 percent of Prosecution Offices and Courts obey the laws and their judgments and convictions are based on admissible documents.

However, when it is reputed that the Revolutionary Courts and Prosecution Offices and Special Courts [for Clergy] do not accept the attorneys, it creates a question outside the country amongst those who do not believe in such Shari'a Courts; and it makes them assert that these courts ignore the laws. We know that our courts are following Shari'a and our judges may never issue the baseless judgments as I know the majority of the judges. So, let's

⁵ Ghasem Sholeh-Sa'adi is a former Member of Parliament, Professor of law at the University of Tehran, and attorney who during the post election protests in 2009 was arrested and sentenced to a total of 3 years in prison and banned from practicing law and teaching at the university for ten years.

disarm the foreigners and take their subject of propaganda. There is nothing more urgent than the respectability of the Islamic Regime.”

Another interesting statement was made by the Deputy of the Minister of Justice, Mohammad Jafar Montazeri, who was representing the government during the discussions and tried to prevent the passage of the law. His statement clearly demonstrated the stance of the Revolutionary Regime against the attorneys:

According to article 7 of the Regulations of the Revolutionary Courts and Prosecution Offices⁶: “every accused person has the right to appoint an attorney who shall be well-informed of the Islamic judicial and criminal law”. So, the Revolutionary Court says that the attorney you want to appoint must be a righteous attorney. A non-righteous person, who has never prostrated in front of God, do not number low in the Bar Association and amongst attorneys, and our committed friends in the Bar Association will admit that the majority [of attorneys] are not righteous. The Revolutionary Court does not say that you do not have to appoint an attorney. The Revolutionary Court has never told anybody that he does not have the right to enjoy this legal right. Instead, they say you must appoint a righteous person...

Another point is that, as you are aware, the Revolutionary Courts deal with security cases and because of the importance of the issue, the judges of the Court considers the interest of the country and does not allow that a file full of security documents be handed to every lawyer coming from somewhere. These reasons together make the Revolutionary Courts cautious about accepting attorneys. So, the assertion that the Revolutionary Courts do not accept attorneys, as referred to in the preamble of this Bill, is not true.”

Finally while the Bill was passed by Parliament the Guardian Council did not confirm it. Due to the insistence of the majority of the Members of Parliament on their Bill, it was sent to the Regime’s Expediency Council to solve the conflict.⁷ On October 3, 1991 the Expediency Council passed the Law of “Appointment of Attorney by Parties to a Lawsuit” (hereinafter the “Law of Appointment”) according to which:

“Parties to a lawsuit have the right to appoint their attorneys and all the courts of law are obliged to accept the attorneys.

Note 1- Parties to a lawsuit in the Special Court for Clergy have the same right to appoint their attorneys. The Court shall indicate some clerics as attorneys to be appointed by the accused as his attorney.

Note 2- If the Supreme Court determines that a court has deprived an accused from appointment of attorney, the decision [of the court] is void and in the first occasion [the judge] shall be punishable by disciplinary punishments of level 3 and in the second occasion shall be discharged from judicial office.

Note 3- Attorneys in the position of defence, shall enjoy all respect and safeguards provided for judicial authorities.”

⁶ Adopted on June 17, 1979 by the Revolution Council.

⁷ According to Article 112 of the IRI Constitution, the Regime’s Expediency Council shall solve the conflict at any time that the Guardian Council declares a Bill adopted by the Islamic Consultative Assembly [Parliament] to be against the principles of Shari’a or the Constitution, and Parliament does not follow the views of the Guardian Council and insist on its stance.

In the same days, attorneys who had never stopped struggling for their professional rights and were preparing to hold the election of the Bar Association's Board of Directors saw new hope in light of the Law of Appointment. They appointed the Commission for supervision of the election with Ali Shahidzadeh as its Chairperson. The Commission published the notice of the 20th round of the election and attorneys were invited to participate in the election on October 9, 1991. The candidates began introducing their plans—and with different meetings and discussions everywhere the spirit of the election was in the air.

However, quite shockingly, some Members of Parliament, and in particular Ayatollah AbbasAli Ameer Zanjani⁸, drafted and proposed a “Double-Urgent” bill⁹. Five days after the Law adopted by the Expediency Council and only one day before the Bar Association's election, the Law of Correction of the Bar Associations (hereinafter “Law of Correction”) was adopted which stopped the election and a Commission was established to cleanse the attorneys. By virtue of article 1 of the Law of Correction: “[i]n order to correct the Bar Associations, the Commission of Rebuilding the Bar Associations, consisting of six attorneys and three judges by appointment of the Head of the Judiciary, shall be formed for a period of one year to implement this Law...”. Moreover, according to its article 5, the main function of the Commission was to expel the attorneys who according to the view of the members of the Commission had relationships with the Pahlavi Regime or were members of parties or groups declared illegal. Note 2 of article 5 also stipulated that “[u]ntil the period of this Law is finished, the Bar Association's Board of Directors shall be stopped and will be held thereafter.”

Therefore, on the next day, the attorneys who went to the Bar Associations to participate in the election were informed about the stop order and the protest of the attorneys and the Bar Associations were frustrated. The outcome of the said Commissions was the revocation of licenses of 133 attorneys including some professors in law. So, attorneys were purged for a further time after the 1979 Revolution. Moreover, the first election after the Revolution was suspended again and ultimately resulted in attorneys being denied the right to elect their directors for 18 years.

In respect to the passage of the Law of Correction, some matters of note:

First, in a rare occasion, the Law was passed by both members of Parliament and the Guardian Council. In fact, because the Bill was Double-Urgent, the members of the Guardian Council attended the session of Parliament and after the Bill was passed by MPs the members of the Guardian Council approved it in the same session.

Second, contrary to article 1 of the Civil Code of Iran which requires the laws to be signed by the President and published in the Formal Gazette in order to come into force, the Law of Correction—pursuant to the provisions in its last article— came into force from the date the law was adopted. This expedited provision was on account of the shortage of time the providers of the Law of Correction experienced only one day before the election would be held.

Third, while the period of the implementation of the Law and forbidding the election was one year, and it was extended for an additional year, in practice it postponed the election until 1997.

⁸ AbbasAli Ameer Zanjani (1937-2011) was the former Member of Parliament who on December 27, 2007, despite the criticisms, was appointed as the Chairperson of the University of Tehran.

⁹ In Iranian political parlance, a “Double-Urgent” bill is a type of bill which due to the high urgency of its provisions and resulting passage, necessitates that Parliament expedite its general meeting process and hold a general meeting within 24 hours after the double-urgency of the Bill is passed. This kind of bill shall not be sent to the specialized Commissions of Parliament. In addition, the members of the Guardian Council shall attend the session of Parliament and after the Bill is passed by MPs, the members of the Guardian Council shall declare their decision in the same session or within 24 hours.

These events could not remain hidden from the eyes of international observers. Reynaldo Galindo Pohl, the Special Representative of the United Nations Commission on Human Rights at the time, highlighted the issue in his report on the situation of human rights in the IRI and stated:

*“The election of members of the Bar Council, which had been scheduled to take place on 9 October 1991, was postponed indefinitely. On 8 October 1991, an act on the reform of the Iranian Lawyers' Association was passed, empowering a "Reform Council" to dismiss certain lawyers from the legal profession before any election could be held. The members of the "Reform Council", appointed by the Head of the Judiciary, must dismiss lawyers who had served in certain government posts before the establishment of the Islamic Republic; individuals "who have participated in rebellions against the Islamic Republic or have acted effectively in support of unlawful groups"; and "members of pernicious sects or organizations whose aims are based on the denial of sacred religions”.*¹⁰

He also expressed his concern about the independence of the legal profession in the IRI:

*“...the continued absence of an independent association of lawyers in the Islamic Republic of Iran undermines the principle that lawyers must be allowed to carry out their professional duties without fear of intimidation and pressure from authorities.”*¹¹

The Law on Conditions for Obtaining the Attorney’s License -- 1997

In 1997, after the election of reformist President Seyed Mohammad Khatami, as a result of struggles of attorneys and their insistence on their professional rights, and also due to international pressure, specifically the emphasis of the Special Representative of the Commission on Human Rights, the authorities concluded that an election of the Bar Association could be held. Previously, however, most likely as a cautionary measure by the government, the Law on Conditions for Obtaining the Attorney’s License had been adopted on April 6, 1997 (hereinafter the “Law on Conditions”), which prescribed a new mechanism to control the free election of the Board of Directors. It was stipulated by the Law on Conditions that the competence of the candidates for the Bar Association's Board of Directors must be confirmed by the Disciplinary Court for Judges. In addition, according to articles 2 and 4 of the Law on Conditions a list of general (i.e. for all lawyers) and special (i.e. for the Directors) conditions were deemed required for the candidates:

1. Belief and practical commitment to the rules and foundations of the holy Islam.¹²
2. Belief and commitment to the Regime of the Islamic Republic of Iran, primacy of an Islamic jurist (*velayat-e-faqih*), and the Constitution
3. Lack of a criminal record.
4. Lack of any background of membership and cooperation with apostate groups and misleading and anti-Islam sects and groups whose charters are based on denial of divine religions.
5. Lack of relationship with Pahlavi Regime and empowering the foundations of the Royal Regime.

¹⁰ Final report on the situation of human rights in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr. Reynaldo Galindo Pohl, para 130, E/CN.4/1993/41, January 28, 1993

¹¹ Ibid.

¹² According to note 4 of article 2 of the same Law, exception applies to the believers of other official religions. Article 13 of the Constitution only recognizes Zoroastrian, Jewish, and Christian Iranians as the “official religious minorities”.

6. Lack of membership and support of illegal and anti-IRI cliques.
7. Minimum 35 years of age.
8. Minimum eight years of practising as an attorney or four years of serving as a judge plus four years of practising as an attorney subject to the condition that their incompetence is not declared by the Disciplinary Court.
9. Lack of any disciplinary conviction of grade four or higher¹³.
10. No infamy for moral corruption (ill reputation)
11. Not committing acts against dignity, honour and the prestige of attorneyship.¹⁴

Clearly, some of the abovementioned conditions deal with personal views and opinions and therefore violate the fundamental freedom of belief and conscience. They are also broad and undefined and are not required to be proven in a court of law. Therefore they could be applied arbitrarily and according to personal and political views of the authorities. Such conditions have created grounds for preventing prominent attorneys and human rights defenders from joining the Board of Directors. Also, in abusing these conditions, the Judiciary can exert its control over the Board of Directors.

The body which can disqualify the candidates is the “Supreme Disciplinary Court for Judges”. Note 1 of article 4 of the Law on Conditions for Obtaining an Attorney’s License stipulates:

“The Supreme Disciplinary Court for Judges is the authority responsible for dealing with the competence of the candidates and it has a duty to make enquiries about their competencies, within a period of two months, from relevant legal bodies and announce the results; and, in the case of inquiry, the relevant legal bodies that may have records or information about the candidates are obliged to announce it.”

The usual procedure for the said inquiries from “the relevant legal authorities” is that the first branch of the Supreme Disciplinary Court for Judges makes inquiries of the Ministry of Intelligence, the Revolutionary Court, the Police, and other law enforcement and judicial bodies. Then the conditions of every candidate shall be examined and the final decision shall be announced to the Bar Association. Although in some cases those attorneys deemed disqualified, as well as Bar Associations, have, rarely successfully, protested against the decisions of the Court, there is no procedure prescribed in law that provides for these challenges.

In addition, according to note 3 of article 4 of the Law on Conditions, the Ministry of Justice was obliged to hold the election of the Bar Association’s Board of Directors under the new Law within six months after the Law was passed. Accordingly, in the election held on January 14, 1998 at the Palace of Justice in Tehran, almost half of the candidates were disqualified by the Supreme Disciplinary Court. The attorneys confirmed by the Court were individuals who were trusted by the security officials not to criticize the government and the competency of any lawyer acting defiantly was not approved. Despite this fact, the twentieth round of elections of the Bar since its establishment and the

¹³ According to article 76 of the Regulations of the Law of Independence: “Disciplinary Punishments are as follows:

- 1- The Written Notice
- 2- Reprimand with a notice in file
- 3- Reprimand with a notice in the Official Gazette and the Journal of the Bar association
- 4- Demotion of the degree
- 5- Suspension [from practicing law] from 3 months to 3 years
- 6- Life deprivation from practicing law.”

¹⁴ Conditions number 1-6 are general (i.e. for all lawyers) and number 7-11 are special (i.e. only for the Directors of the Board).

first after the 1979 Revolution was held and those confirmed by the Judiciary and then elected by attorneys began their duties in a month.

It is clear that, in passing this law, Parliament planned to open the doors of the Bar Association to more intervention of the Judiciary in order to disqualify the candidates who stand against human rights abuses and do not remain silent about the violation of people's basic rights. In doing so, the control of the Judiciary over the Bar Association was legalized and the independence of the Bar was seriously damaged. The Bar Associations which were responsible for the discernment of competence of the candidates of the Board lost their authority. In fact, it would be true to say that until 1997 the independence of the Bar Associations was denied in practice, while in 1997 it was attacked in law.

This became a routine for the next rounds of the election. Each time, a series of candidates— mostly those engaged with human rights cases—were disqualified by the Supreme Disciplinary Court of Judges without any specified reason. In the most recent example of the abuse of the Judiciary from the abovementioned Law, while 118 attorneys became candidates for the 27th round of election of the Central Bar association's Board of Directors, on February 8, 2012 the Supreme Disciplinary Court for Judges only confirmed the competence of 88 individuals. After the protests by the then Board of Directors and the candidates, the competence of 3 more candidates was confirmed.¹⁵ In the 26th round, too, from a total of 79 candidates, in the first occasion the competence of 28 attorneys, including Seyed Mohammad Jandaghi, the then President of the Bar Association, was rejected; and after the Bar Association and the disqualified candidates protested, the competence of an additional 15 was confirmed.

Legal Advisors of the Judiciary (Article 187)

In 2001, by virtue of article 187 of the Law of Third Economic, Social and Cultural Development Plan, the Iranian government created a new body of lawyers known as "Legal Advisors of the Judiciary". Article 187 of the aforementioned Law provided:

"In order to provide the public with required legal protections and to maintain the public's rights and facilitate the public access to legal services, the Judiciary shall be authorised to confirm the competence of the graduates of law who shall be granted licences for the establishment of legal advisory institutes.

In order to pursue the legal affairs of the applicants, the presence of the said advisors in the courts, as well as governmental and non-governmental organizations, shall be authorized ... The relevant regulations of this article ... shall be passed by the Head of the Judiciary."

The effect of this provision is that legal advisors are authorised to present cases in court like Iranian Bar Association attorneys. Similarly, the Legal Advisors' Centre operates in parallel with the Iranian Bar Associations, but unlike attorneys, legal advisors work directly under the supervision of the Judiciary. According to article 3 of the Regulations of the article 187 (adopted by the Head of the

¹⁵ The final list of the disqualified candidates are as follows: 1-Ali Hamed Tavassoli 2-Ali Najafi Tavana 3-Hossein Askari Rad 4-Farideh Gheyraat 5-Ahmad Javidtash 6-Amir Hossein Abadi 7-Gholamali Riyahi 8-Jahangir Mostoufi 9-Reza Motamedi 10-Majid Pour Ostad 11-Shahram Fathi Nejad 12-Ramezan Haji Mashhadi 13-Rosa Gharachorlu 14-Jamshid Vahida 15-Mohammad Ali Dadkhah 16-Giti Pour Fazel 17-Mahmoud Alizadeh Tabatabaei 18-Nemat Ahmadi 19-Abdolsamad Khorramshahi 20-Akbar Sardarzadeh 21-Hossein Ali Farzad 22-Shahla Pournazeri 23-Mohammad Hossein Aghasi 24-Sorayya Seddighi 25-Mohammad Ali Jedari Foroughi.

Judiciary on September 4, 2002), the Legal Advisors' Centre has been established and functions under the supervision of, and as a subsidiary to, the Legal Deputy of the Judiciary. The Centre has its own examination and traineeship process and has the ability to issue permits to practise to legal advisors. In contrast to the independent process for the renewal of practising permits for Iranian Bar Association lawyers, permits to practise for legal advisors are renewable annually with the approval of the Judiciary.

It is clear that the power of the Judiciary to grant and repeal licences is likely to result in article 187 legal advisors being strongly influenced by the Judiciary. They are always at risk that their licences may be revoked or not be renewed anymore if they take on the defence of sensitive political and security cases. This represents a significant inroad into the independence of the legal profession as a whole and of individual lawyers in Iran. The relationship may also affect judicial independence and impartiality.

Probably, the case of the lawyers of the *Nematollahi Gonabadi* Order of *Sufi Darvishes* is self evident and leaves no doubt about the lack of independence of legal advisors and their Centre. In the aforementioned case, professional licences of two article 187 legal advisors, Mostafa Daneshju and Omid Behroozji were revoked by the Legal Advisors' Centre, in September 2008. They had previously represented the cases of *Darvishes* on various occasions. It was later revealed that the decisions of the Centre were purely based on the report of the Deputy of the Attorney General in Political and Security Affairs and confidential letters of the Ministry of Intelligence.¹⁶

Another concern is that the training requirements for legal advisors are much less stringent than those required for independent lawyers of Bar Associations. An applicant wishing to qualify as a legal advisor only has to sit for one exam and to complete a traineeship of six months. This is to be contrasted with Iranian Bar Association lawyers who sit for a very competitive entrance exam as well as undertaking an 18-month traineeship plus a final plenary exam named *Ekhtebar*, one of the most difficult exams held in Iran. Undoubtedly, the article 187 scheme is producing lawyers who are under-qualified in comparison with Iranian Bar Association lawyers.

The Iranian Government's purported rationale for the introduction of article 187 legal advisors was due to concerns that the Iranian Bar Associations were trying to monopolize permits to practice as a lawyer. It is in fact asserted that article 187 was introduced to overcome the Iranian Bar Associations' unwillingness to allow more lawyers to practice in the country.

The Iranian Bar Associations have always rejected this assertion and referred to article 1 of the Law of Conditions for Obtaining Attorney's License, according to which, Bar Associations have been obliged to hold the Bar exam at least once a year; and the number of trainees that must be admitted every year shall be decided by a special Commission with only one member representing the Bar's interests. According to the note of the aforementioned article, the Commission is composed of the Chief Judicial Director of the Province, the Chairperson of the first Branch of the Revolutionary Court, and the Chairperson of the Bar Association. If the Judiciary was concerned about the shortage of lawyers in Iran, instead of creating a new breed of dependent lawyers, it could simply require the Bar Associations to admit more trainees.

It should also be noted that article 187 of the Third Program of Economic, Social and Cultural Development expired in March 2004 as it had only been enacted for a five-year period. It is clear that

¹⁶ Radio Farda, Independence of the Bar Association: A Dark Future, <<http://www.radiofarda.com/articleprintview/2029585.html>> accessed May 13, 2012.

the Iranian Parliament showed no tender to renewing the law in order to make the continuation of the article 187 Legal Advisors' Centre legally valid. First, the issue of article 187 legal advisors was not included in the Fourth Program of Economic, Social and Cultural Development. Second, when in November 2009 the Bill of "Repeated Article 187" was introduced to be included in the Fifth Program, which aimed to renew the old article 187, albeit due to objections and lobbies of the directors of the Bar Association, it was rejected by Members of Parliament.

Surprisingly, despite this legal flaw, and while since 2001, approximately 14,000 legal advisors have been admitted to practise as legal advisors under article 187, the Legal Advisors' Centre still plans for admission of more legal advisors. In 2011 the article 187 Centre advertised for a new round of admission and in response the Bar Association wrote a letter to the Head of the Judiciary and objected to the plan with reference to the legal flaws of the article 187 scheme and called for cancellation of the exam. Since then, the exam has not yet been held.

In addition, directors and members of the Legal Advisors' Center have made every effort to integrate their Centre and its advisors with the Bar Associations and their attorneys as if they are one and the same. For instance, the Centre, with the support of the Judiciary, has tried its best to introduce the legal advisors as attorneys. While in article 187 they were referred to as "legal advisors", they purport to be "attorneys" and introduce themselves as such. Accordingly, their supervising Center which was established by the Judiciary was labeled as "**Centre for Legal Advisors, Attorneys, and Experts of the Judiciary**". Quite similarly, in 2009, the then Head of the Judiciary, at the end of his term of office and in the midst of the presidential election protests, accepted the proposal of the Legal Advisors' Centre to hide the affiliation of the Centre to the Judiciary in its title and make it more similar to the Bar Association. As a result, he agreed to rename the Centre to "**National Association of Legal Advisors, Attorneys, and Experts**". This was even published in the Official Gazette¹⁷ which customarily publishes new Laws and Regulations. This change was strongly objected to by the Bar Associations and a complaint was filed by the Central Bar Associations in the Court of Administrative Justice asking for its nullification. Although the Court showed no tendency to nullify the changes, the Centre's new title has been abandoned in practice.

It is clear that the article 187 scheme has created unnecessary challenges for the Bar Associations and the Directors of the Bar Associations have been forced to allocate much effort to counter the infringement of the Legal Advisors' Centre. The Bar Associations are extremely concerned about article 187 legal advisors and believe that they constitute a serious threat to the independence of the legal profession as well as of the Bar Associations. In their point of view, under the 187 scheme the body of prosecution and the body of defense are both related and affiliated to the same source i.e. the Judiciary. They view these circumstances as contrary to people's right to defense which has been foreseen and guaranteed in the constitution and international human rights instruments.

For the Bar Associations, all these pressures have targeted the independence of the Bar and aimed to increase the control of the Judiciary over it. In fact, the article 187 scheme has set the stage for creation of a comprehensive Bill of Attorneyship that purportedly will end the conflicts between the Bar Associations and the Legal Advisors' Centre. Even the Bar Associations were persuaded that a new ruling is needed to bring the 187 scheme and its legal advisors under the umbrella of the Bar Associations and therefore prepared a draft of the Bill. However, the draft was neglected by the Judiciary and was replaced by a Judiciary-prepared Bill which will end the era of independence of the

¹⁷ Official Gazette No. 18771 dated August 12, 2009.

Bar in Iran. Then, it would be true to say that the article 187 scheme has operated as a “Trojan Horse” with the inherent goal of ending the independence of the Bar.

Post-June 2009 Presidential election

In 2009, less than a week after Iran's disputed June 12 presidential election and in the midst of a government crackdown on peaceful protesters and dissidents, a new challenge to the independence of the Bar was announced. On June 17, the “Revision to the Regulations of the Law of Independence of the Bar Associations” which was approved by the Head of the Judiciary, Ayatollah Mahmoud Shahroudi, was announced in the Official Gazette. It was supposed to take effect immediately and did not require approval by parliament or any other body. The revised Regulations would give the Judiciary the decisive role to approve membership of the Bar and lawyers’ licensing applications, thereby undermining the independence of the Bar. The Regulations would gravely undermine the Bar's independence, giving the government the ability to handpick the attorneys and deny political critics and human rights defenders the right to practice as lawyers.

Article 11 of the Regulations, for example, prescribed a five-member committee which should be established to make decisions on Bar membership and licensing applications and renewals. Three of its members should be appointed by the Head of the Judiciary, while the other two, appointed by the Bar Association's board of directors, must also have the Judiciary Chief's approval. Similarly, article 17 stated that the "deputy to the head of the Judiciary or an official representative of the Judiciary will be responsible for the signature of the licenses to practice law."

Notably, one week later, Ayatollah Shahroudi left the office and the new Head of the Judiciary, Ayatollah Sadeq Larijani, took his place. These fast, and seemingly prior-planned, movements of the Judiciary, concurrent with media restrictions as well as the detention of hundreds of prominent activists and writers and several well-known human rights lawyers, shocked the Bar Associations and the legal community. Under such circumstances, although the Bar Associations had been severely hampered in their ability to voice objections to the law and its dangerous consequences, the Chairpersons of all Bar Associations called for an urgent meeting in the Central Bar Associations in Tehran and unanimously stated that due to its clear violation of the Law of Independence of the Bar Associations they would not follow the revised Regulations and its nullification must be pursued in the Court of Administrative Justice.

In fact, they were referring to article 22 of the Law of Independence according to which: “The Bar Association, taking this Law into consideration, shall prepare the required regulations for the affairs of the Bar such as the election [of the Board of Directors] of the Bar, etc. and the regulations shall take effect after approval of the Minister of Justice [currently the Head of the Judiciary]. The Bar Associations believed that they were responsible to prepare their required regulations, if they wished, and send it to the Head of the Judiciary for approval. In this case they had not prepared any revision to their old Regulations on the Law of Independence and nor did they intend to do so. Accordingly, they had not sent any regulations to be approved by the Head of the Judiciary. Indeed, they were informed about the new Regulations only after it was published in the Official Gazette.

To overcome this legal flaw, in article 99 of the new Regulations it was mentioned that “these Regulations have been prepared ... on the basis of the proposal of the Bar Associations”. This allegation was strongly refused by the Bar Associations and they stressed that the Regulations had

been prepared without knowledge or proposal or agreement of the Bar Associations. They believed that the Regulations would take the Bar Associations back to six decades ago when they were operating under the direct supervision of the Judiciary. The objections of the Bar Associations and international organizations urged the new Head of the Judiciary to order the suspension of the Regulations for a period of six months. So far, the suspension order has been renewed twice for six-month periods each. It would be fair to say that three times of suspension show that the Regulations, even in the eyes of the providers, are not enforceable.

Additionally, in September 2009, the Iranian Union of the Bar Associations filed a complaint in the Court of Administrative Justice asking for the nullification of the new Regulations. However the Court did not show a tendency to do so. Instead, in December 2010, clearly reluctant to rule against its superior authority, the Court denied its jurisdiction to nullify the rulings provided by the Head of the Judiciary. The decision was quite awkward since the same Court, just several months earlier, had accepted and heard another complaint against the “Regulations of the Attorney Fees” approved by the Head of Judiciary.¹⁸ However, realizing that something more powerful than regulations were needed, the Judiciary proposed the new Bill of Attorneyship which will be discussed in more detail in the following chapter. In another attack to the legal profession, on March 2, 2010 the Supreme Court issued its leading decision number 714, according to which, the requirement of intervention of an attorney in civil cases was dismissed. It was in fact contrary to the constitutional duties and general policies of the Judiciary to expand the legal services and facilitate the public access to legal counsel in order to lower the rate of baseless and flawed cases.

Furthermore, following the 2009 election, many attorneys and mainly those engaged with human rights related cases, were targeted for harassment and unfair prosecution as a result of practicing their profession.¹⁹ However, as a result of the aforementioned attacks and pressures, the Bar Associations, namely their Board of Directors, have preferred to remain silent and could not protect the professional and individual rights of their members. Specifically, when on May 29, 2011, Nasrin Sotoudeh, the prominent attorney and human rights defender who was sentenced to 6 years in prison and barred from practicing law for 20 years, was taken in handcuffs from prison to the Head Quarters of the Central Bar Association in Tehran in order to attend the Disciplinary Court, the Board of the Bar Association did not publicly object to this unfair and unjust treatment of one of their members.

New Bill of Attorneyship

In recent years, the idea of a new comprehensive Law of Attorneyship was being pursued by Parliament and on November 23, 2010, 153 Members of Parliament had proposed the “Bill of Attorneyship”. It would be fair to say that the Bill was intended to end the conflicts between the Bar Associations and Article 187 Legal Advisors’ Centre and bring the legal advisors under the umbrella of the Bar Associations. Moreover, the providers of the Bill believed that the current laws of attorneyship were outdated and the new law could address the new developments and needs of the legal profession. However, the independence of the Bar Associations had not been guaranteed in the

¹⁸ Decision No. 216 dated May 31, 2009, issued by the General Session of the Court of Administrative Justice.

¹⁹ Shirin Ebadi published a list of 42 attorneys who have been harassed and prosecuted following the 2009 election; <<http://www.iranhumanrights.org/2011/08/bar-association-under-attack/>> accessed May 28, 2012.

Bill and, for example, the Judiciary would still be the body responsible for discernment of competence of the Directors of the Board.

Although the Bill received some criticisms by the Bar Associations and attorneys, the following events convinced them that this Bill, with some modifications, might be the best possible option. However, the Bill of 153 MPs was later stopped as the Judiciary was obliged by Parliament to prepare a new Bill. In fact, when in 2009 the “Repeated Article 187” which aimed to renew the old article 187 was rejected by Members of Parliament to be included in the Law of the Fifth Program of Economic, Social and Cultural Development, instead, in article 212 of the very Law, they obliged the Judiciary to prepare and propose the Bill of Comprehensive Law of Attorneyship.

In early 2012 it was revealed that, without the knowledge or agreement of the Bar Associations, the “Bill of Formal Attorneyship” has been prepared by the Judiciary and would be submitted, through the Ministry of Justice and the Government, to Parliament in due course. The Bill, which was subsequently leaked and then published by the Bar Associations, appears to be intended to wipe out independent Bar Associations in Iran. The Bill is quite similar to the “Regulations of the Law of Independence of the Bar Associations” which was formerly adopted by the Head of the Judiciary but later suspended following the objections of the Bar Associations. In fact, the key provisions of the Regulations which would severely damage the independence of the Bar have been kept in the Bill, and in an even more extreme form.

In an interview, the Parliamentary and Legal Deputy of the Ministry of Justice confirmed that the Bill of Formal Attorneyship was submitted to the Government and is being examined by the Commission of Government Bills. He declared that the Bill is aimed mainly to increase the supervision over the Bar Associations but their independence under this Bill would be 100 percent.²⁰ In response, the President of the Union of Bar Associations interpreted the statement about the full independence of the Bar under the new Bill as sarcasm and lamented that the recent Bill would leave no independence at all.²¹

Below, the controversial articles of the Bill of Formal Attorneyship, which have been objected to by the Bar Associations and attorneys, will be examined. Although the contents of the articles are self-explanatory and clearly show the intention of the drafters to end the independence of Bar Associations and attorneys, some comments are added to provide relevant background and highlight the main areas of conflict.

The first change proposed in the Bill (article 1) is to replace the current title of the Bar Associations with the “Organization of Formal Attorneys”. In addition to the fact that it, unnecessarily, replaces the standard and internationally accepted title of the Bar Associations, it resembles the other governmental and judicial organizations such as the State Organization of Registration of Documents and Real States or Organization of Registration of Personal Status, etc. Accordingly, the Union of Bar Associations would be replaced with the High Council of Attorneyship. So, it seems that the drafters of the Bill could not even tolerate a title that would possibly imply the notion of independence and serve as a reminder of the era of independence of the Bar Associations.

²⁰ Bahman Keshavarz, The Organization of Attorneys Means Dependence, April 13,2012 <<http://hamshahrionline.ir/news-166040.aspx>> accessed May 21, 2012.

²¹ Ibid.

Probably, the most significant and dangerous change proposed in the Bill is the idea of formation of a Supervision Commission (*hey'at-e-nezārat*), which shall consist of 7 members all of whom would be appointed by the Head of the Judiciary. Article 25 of the Bill provides:

“In order to examine and pronounce on the decisions made by the High Council of Attorneyship and Provincial Organizations of Attorneys, from the viewpoint of adherence to Shari'a, law, public interests, people's acquired rights, as well as examining the competence of those applying for an Attorney's License and membership in the Board of High Council of Attorneyship, there shall be a committee established called the Supervision Commission which will be composed of seven judges, lawyers and attorneys appointed by the Head of the Judiciary for a period of four years.”

Even the Chairperson of the Supervision Commission shall be appointed directly by the Head of the Judiciary. Article 26 provides:

“The Chairperson of the [Supervision] Committee who is responsible for chairing the meetings, planning the agenda and communicating the decisions of the Committee shall be selected by the Head of the Judiciary.”

Such Commission will be empowered to grant and revoke the licenses of all attorneys. In fact, as referred to in, *inter alia*, articles 29 and 30, it has ultimate authority over a wide range of attorneys' disciplinary and professional affairs such as the competence of the attorneys and the elections of the Boards of Directors.

Article 29- *“The Supervision Commission shall supervise the propriety of the election and pronounce its opinion within 20 days. If it detects an infraction with the influence on the final result [of the election], the Committee shall nullify the election as a whole, or in part with respect to specific ballot-boxes or candidates, and order the re-organization of the election within 20 days.”*

Article 30- *“If the Supervision Commission detects lack or loss of competence in any one of the attorneys or the members of the Board, for reasons other than disciplinary infractions, it will nullify his/her [Attorney's] License. The Supervision Commission, when sufficient reasons exist, can suspend said person from practicing law until the file is completed and a final decision is made within a period not exceeding six months.”*

The Supervision Commission will also control the admission, education and final examination of trainee attorneys. According to article 36, “The names of those accepted in the entrance exam shall be sent to the Supervision Commission. The Secretariat of the Supervision Commission shall inquire about the requirements from the relevant bodies ... After the responses are received, the Supervision Commission examines the applicant's file. If the applicant's competence is accepted by the Commission the file shall be sent to [relevant] Provincial Organizations to issue the Trainee Attorney's License...”. In accordance with the late article 36, “...[t]he Trainee Attorneys' License shall be signed by the Chairperson of the Provincial Organization and the Chief Director of the Justice Administration of the Province.”

Nonetheless, if, the Supervision Commission does not confirm the applicant's competence and this decision is protested, the Commission itself is the body to consider the protest and its decision shall be deemed final. According to article 36, “... in the case of incompetence, the applicant can protest within ten days to the Commission. The decision of the Commission in this respect is final.”

Accordingly, article 38 of the Bill provides: “After the completion of the training course, examination of the trainees and confirmation of their theoretical and practical competence shall be made by Examining Commissions (*hey’at-haye-ekhtebar*). Each Examining Committee shall be composed of three first degree attorneys or judges with at least ten years of experience all selected by suggestion of relevant Chairpersons of Provincial Organizations and approval of the Supervision Committee.” As a result, despite the fact that the Chairpersons of the Provincial Organizations (i.e. the current Bar Associations) have the right to suggest the members of the Examining Commissions, they shall be approved by the Supervision Commission.

Moreover, while currently the Attorneys’ Licenses are being issued by the President of the Bar Association, according to article 42: “[t]he Attorney’s License shall be issued by the signature of the Chairperson of the Provincial Organization and the Chief Director of the Justice Administration of the Province...”. Therefore if the judicial authority refuses to sign an Attorney’s License, the License may not be issued. However, according to note 1 of article 42, the Supervision Committee is determined to consider the protests regarding the process of granting the Licenses: “[i]f the Attorney’s License is not issued within one month, the issue can be protested in the Supervision Commission.”

The same requirement, i.e. the involvement of the judicial authorities, is prescribed for the procedure of taking the professional oath, but without any consequences or complaint procedure for their refusals prescribed in the law. According to article 44 of the Bill:

“After the Attorney’s License is issued and before its submission to the applicant, he/she, in the presence of the Chief Director of the Justice Administration of the Province and at least two members of the Board shall take an oath as followed and sign the written oath....”

To ensure that the supervision of the Commission can be applied in all stages of the professional life of an attorney, article 43 provides:

“Whenever the lack of any requirement set forth in this Law is detected in an attorney, the Organization shall report the issue and the reasons to the Supervision Commission and inquire about the examination ... The Licenses of these individuals are valid until the decision is made unless the Commission deems it necessary to issue the order of suspension [of the said attorney].”

As mentioned earlier, according to article 17 of the Law of Independence of Bar Associations, which has been functioned as a powerful means to prevent the Judiciary from revoking Attorneys’ Licenses: “...no attorney can be suspended or barred from the career of attorneyship unless in accordance with a final decision of the Disciplinary Court [for Attorneys].” However, the drafters of the new Bill of Formal Attorneyship have had a powerful desire to end this old safeguard of right to defence. As a result, replacing the exclusive role of Disciplinary Court for Attorneys with “competent bodies”, article 48 of the new Bill provides “[n]o attorney can be barred nor suspended from the profession of attorneyship unless in accordance with final decisions of competent bodies.”

The Disciplinary Courts and Prosecutor’s Office for Attorneys are other bodies whose compositions have been changed to satisfy the intentions of the drafters of the new Bill. Currently, according to articles 13 and 14 of the Law of Independence of the Bar Associations, the Disciplinary Prosecutors and the members of the Disciplinary Courts for Attorneys consist of three attorneys appointed by the Board of Directors. However, according to article 90 of the new Bill a judge from the Judiciary shall chair each branch of the Court and attorney members of the Court function only as consultants.

Article 90- *“...Each branch of the Initial Disciplinary Court shall consist of one judge, with at least first [judicial] rank, selected by the Board of the Organization...”*

Note 1- The judge chairs the branch and two attorneys function as consultants of the Court. The Chairperson of the Disciplinary Court delivers its judgements after consulting with the attorney members....”

Similarly, according to article 91 of the new Bill, the Disciplinary Prosecutor for Attorneys must be a judge appointed by the Head of the Judiciary; and attorneys can only function as his assistants and under his supervision.

Article 91- *“The Disciplinary Prosecutor’s Office for Attorneys shall be established together with every Disciplinary Court. The Prosecutor chairs the Prosecutor’s Office and shall be appointed by the proposal of the Chief Judicial Director of the Province and approval of the Head of the Judiciary; and may have the required number of assistants. The Prosecutor’s Assistants shall be selected from attorneys and must function in prosecution affairs under the supervision of the Prosecutor.”*

The similar scenario has been planned for the Disciplinary Court of Appeal for Attorneys and a judge selected by the Head of the Judiciary chairs the Court. Quite strangely, the two judges of the Court of Appeal may deliver the verdict together without any need of majority (favourable opinions of three members).

Article 93- *“The Disciplinary Court of Appeal for Attorneys shall consist of a Chairperson and a Vice-Chairperson [both] from judges selected by the Head of the Judiciary, and three attorneys as members [of the Court] selected by the High Council of Attorneyship. The decisions of the Disciplinary Court of Appeal of Attorneys shall become official with the favourable opinion of three members including of judges or favourable opinion of two judges.”*

The Supervision Commission also prepares the required regulations of the law and the Head of the Judiciary shall approve them. This is while, currently, according to article 22 of the Law of Independence of the Bar Associations, the Bar Associations are responsible for preparation and proposal of their needed regulations although the Head of the Judiciary is the responsible authority to approve it.

Article 121- *“Regulations referred to in this Law, shall be prepared by the Supervision Commission and approved by the Head of the Judiciary within six months of the date this law comes into force.”*

The Supervision Committee, in addition, will take over the assets and properties of the Bar Associations. In fact by virtue of article 122 of the new Bill the Bar Association would be dissolved within a year after this Law comes to force and loses its ownership on its properties and assets in favour of the Supervision Commission.

Article 122- *“Within two years after this law comes to force, the Bar Associations and the Centre for Legal Advisors, Lawyers and Experts of the Judiciary shall transfer the records of lawyers that received their licenses or engaged in the training course to the relevant Provincial Organizations. The Supervision Commission, considering the legal and Shari’a*

rules, shall make required decisions about the assets and properties and cashes of the Bar Association and the lawyers of the Centre [for Legal Advisors].”

Surprisingly, as the last plan of the drafters of the new Bill to give the Supervision Commission the right to say the final word, the decisions made by the Commission cannot be challenged and shall be deemed final.

Article 123- The decisions and judgements issued by the Supervision Commission, Competence Discernment Committee, The High Council of Attorneyship, Disciplinary Courts, Provincial Organizations, as well as Executive Regulations and Directives of this law cannot be protested nor can be overturned or nullified by the Administration Justice Court and other judicial bodies.

In a piece published in Shargh daily, Bahman Keshavarz—the former President of the Bar Association—expressed:

“These kind of efforts show that a kind of Bar Association is desirable [for the government] that all its crucial decisions are made in the Judiciary; to give the license to whoever they want and deprive the others; to extend the licenses of whoever they want and simply and without any procedure not to extend the licenses of whoever they do not want; accordingly its affiliated attorneys cannot say too much. Honestly, is such a Bar Association appropriate for the Judiciary of the IRI? Are the judgements issued using [the services of] such attorneys and Bar Associations acceptable by the international community? Can we assert that we imply the Article 35 of the Constitution and provide the fair trial and right to defence for people? Would the attorneys of such a Bar Association be accepted and honoured in the world?”²²

Somewhere else he states:

“We can certainly expect that every lawyer who says too much or accepts undesirable clients can expect to wake up in the morning and find that his license has been revoked. Intellectuals will be punished for their thoughts, and will not be able to retain suitable counsel because all of the lawyers with the courage to work on their cases have been or will be disbarred. Blacklisted politicians will search for independent and courageous lawyers, but will not be able to find them. Even more heart-wrenching is the situation of people who confront serious judicial proceedings but will have no refuge.”²³

Apart from the individual objections of the directors of the Bar Associations, on April 19, 2012 the Chairpersons of the Bar Associations gathered together for an urgent meeting and issued a common Statement about the new Bill:

1- In the aforementioned Bill, the rightful demands, needs and expectations of the society, and legal, social, cultural requirements, as well as international instruments and the IRI’s Constitution and the principles of codification and impossibility of execution of the said rulings are ignored.

²² Keshavarz, Bahman, Independence of the Bar and 13 Controversial Articles, Daily Shargh, April 15, 2012.

²³ Keshavarz, Bahman, Independence of the Bar Association at Risk, Daily Etemad, July 4, 2009.

- 2- *The draft of the Bill not only denies the people's right to defence, but also violates the foundations of the independence of Bar Associations and the indisputable principle of immunity of attorneys in the position of defence.*
- 3- *The Bill is drafted without taking into consideration the opinions of experts and the drafts previously prepared by the Bar Association, The Research Centre of Parliament, The Judicial Development Deputy of the Judiciary and the draft dated November 23, 2011 proposed by 153 Members of Parliament which was referred to the Judicial and Legal Commission of Parliament.*
- 4- *Regarding the allocated duties to the Bar Association under the Law of Attorneyship and the Law of Independence [of the Bar Association] and the relevant regulations, during the last six decades the professional problems have been always considered by the authorities of the Bar. Thus, any preparation of bills regarding the profession of attorneyship by inexperienced individuals and without paying attention to the problems, not only is not true or reasonable but also does it contradict with constitutional duties of the Judiciary. Therefore, the Bill drafted by the Judiciary which ignores the problems and merely aims at interfering with the affairs of the Bar Association, in no way may be supported by the 40 thousand member society of attorneys.*

It is therefore advisable that a commission, consisting of the equal number of the representatives of the Judiciary, Bar Associations and the Research Centre of Parliament, to be established in order to prepare a comprehensive and complete draft.

The issue even went beyond domestic levels: international bodies declared their concerns about the new plans of the IRI for the Iranian Bar association. The International Bar Association's Human Rights Institute (IBAHRI), for example "join[ed] the bar associations in Iran in objecting to the amendment as totally compromising the independence of bar associations in Iran."²⁴ Justice Richard Goldstone, Co-Chair of the IBAHRI said "This amendment eviscerates the independence of Bar Associations in Iran, compromising their ability to represent their clients and silencing any opportunity to be critical of the government ... Lawyers cannot adequately and properly perform their duties whilst subject to governmental controls over their qualifications and ability to practice."

Finally, it is worth noting that the 8th round of Parliament was ended recently and the next round has started their work. Therefore, it is up to the current Members of Parliament to choose between working on the "Bill of Attorneyship" proposed by 153 MPs or the "Bill of Formal Attorneyship" prepared by the Judiciary.

²⁴ International Bar Association Human Rights Institute, IBAHRI alarmed at recent changes to Iranian legislation curtailing the independence of bar associations, 20/07/2009, <<http://www.ibanet.org/Article/Detail.aspx?ArticleUId=F32AAFBC-F91>> accessed May 8, 2012.

Judicial Order to Close the Union of the Bar Associations

In the most recent round of attacks on the Bar Association, on November 6, 2012, just two days before the annual entrance exam of the Bar, a judicial order was issued that ordered the closure of the Union of the Bar Associations. Referring to the investigations through the relevant bodies including the Interior Ministry, Organization of Registration of Companies, Tehran Tax Affairs Organization, and in accordance to the Procedure Code and the Law of Punishment of Embezzlement, Bribery and Fraud, the abovementioned order obliged the Third Base of the Police Force of Tehran to shut down the Headquarters of the Union in Tehran after inspecting and recording its belongings. In fact, the Interior Ministry had declared that the Union of the Bar Associations was not registered and no permission was issued for it.²⁵ The legal community was absolutely shocked when the news was published, especially when it was revealed that no judicial paper was noticed regarding the investigations nor were the Directors of the Bar informed. Apparently, after the negotiations between the Directors of the Bar and the high ranking judicial authorities the enforcement of the said order is suspended.²⁶

Conclusion

A survey of the history of the Bar Association and the legal profession in Iran demonstrates that the independence of the profession has always been a sensitive issue. In the period following the emergence of the modern judiciary and prior to the 1979 Revolution, the general approach of the government and the laws passed in this time resulted in the legal profession gaining independence from the Judiciary and the government. However, in the last three decades since the 1979 Revolution, the trend has been towards the restriction of freedom and independence of lawyers and the Bar Association. As already discussed, the Bar Association's independence, which was guaranteed by the Law of Independence 1953, was attacked—in practice—in the aftermath of the Revolution and damaged—in law—when the Law of Conditions 1997 was adopted. This trend is still visible at a higher degree, and, apparently, the independence of the Bar is seen by the government as a severe threat to the legitimacy of the IRI.

The IRI Judiciary has always tried to diminish the role of lawyers and their professional associations. In fact, to ensure that lawyers are not able to cause any problem for the State, the Judiciary has made every effort to bring them under its supervision. As mentioned earlier, before the Law of Independence 1953 was passed, George Mouris—then President of the International Bar Association—compared the dependent Bar Association of Iran to a “minor” who needs a “guardian”. This is exactly the IRI Judiciary's ideal relationship between the Bar Association and the Judiciary. However, the IRI Judiciary has always hidden its constant desire to play the role of guardian for lawyers under titles such as creating more job opportunities and providing easier access to legal advice, which, resulted in establishment of Legal Advisors of the Judiciary (article 187); or, updating the outdated laws, which, is the alleged motivation behind the new Bill of Attorneyship.

²⁵ Source: <<http://aftabnews.ir/vgli3yazwt1ayrx..bttc2ckr.html>> accessed Nov 16, 2012.

²⁶ The Spokesperson of the Judiciary, in his press conference on Nov 12, 2012, confirmed that the enforcement of the order of shutting down the Union of the Bar Associations is suspended until further investigations. <<http://www.scoda.ir/%D8%A8%D8%A7%DB%8C%DA%AF%D8%A7%D9%86%DB%8C/1232>> accessed Nov 16, 2012.

The IRI knows, and on quite a number of occasions has painfully experienced, that, independent lawyers, due to their established ethical and professional values and duties, stand against violations of law and human rights. Lawyers have resisted and, to a degree, survived against the previous attacks to their independence. And some of them have had the courage to challenge the IRI Judiciary while their suppression required the IRI to pay a high price. In fact, so far, the IRI authorities have been unable to easily revoke the licenses of “trouble-making” lawyers and defuse their potential threat. The cases of lawyers such as Nasrin Sotoudeh, Mohammad Ali Dadkhah, Mohammad Seifzadeh, Abdolfattah Soltani, Nasser Zarafshan, Javid Houtan Kian, etc. who were prosecuted and sentenced to imprisonment clearly show that the IRI, despite its numerous attacks on the independence of lawyers, is failed to sit in its ideal place as the guardian of all lawyers. In other words, there are still brave lawyers that enjoy an independent spirit and the Law of Independence prevents the Judiciary to revoke their licenses and disarm them forever. Therefore, the new Bill of Attorneyship is proposed to put an end to this battle.

Although some articles of the new Bill of Attorneyship are analyzed in the proceeding part, it should be observed that it is the essence and primary goal of the Bill that must be taken into account. The new Bill, if adopted, will leave neither independence nor the Bar Association intact, in the end result. It would provide a more arbitrary process of selection of lawyers so as to prevent any liberal individual from entering the legal profession in the first place. Then, like the Sword of Damocles, an unchallengeable and ongoing authority would be given to a Judiciary-appointed Commission to revoke the licenses of any lawyer it considers non-conformable. Therefore, it would be true to say that, the ultimate goal of the new Bill is making the Bar association a subsidiary department of the Judiciary.

The question that remains is whether lawyers that receive their licenses from such organizations that are dependent in total on the Judiciary are capable of standing against violations of human rights? Are they able and willing to defend political opponents or prisoners of conscience? Can they defend the rights of the public against the State, without any fear of losing their job? What safeguards would remain that guarantees the respect of human rights of the accused, especially in so-called “national security” cases? Can the Judiciary claim to uphold fair trial standards in its courts?

The provisions of the proposed Bill of Attorneyship run counter to the UN Basic Principles on the Role of Lawyers and violate the internationally recognized right to fair trial. If approved, the new law will seriously threaten and curtail the activities of human rights defenders and other lawyers in Iran. It is also worth mentioning that a similar attempt by the Nigerian government to take over that country's bar association, including the regulation of its members, was found by the African Commission on Human and Peoples' Rights to be a violation of the basic right of freedom of association.²⁷ Therefore, human rights activists and organizations, as well as the UN Special mandate holders regarding lawyers and the situation of human rights in Iran are urged to take immediate action to save the oldest body of civil society in Iran.

²⁷ Human Rights Watch, Iran: Halt Moves to Curtail Lawyers <<http://www.hrw.org/news/2009/07/16/iran-halt-moves-curtail-lawyers>> accessed July 5, 2012. For the details of the case see <<http://caselaw.ihlda.org/doc/101.93/view/>> accessed July 6, 2012.