A Closer Look at the Judicial System of Iran with Emphasis on the Criminal Courts and Howness of their Practice

Nafiseh Eivazi

1LLM, Department of Law, Tabriz Branch, Islamic Azad University, Tabriz, Iran

ABSTRACT: The judiciary is an independent branch whose powers and responsibilities include administration and implementation of justice, supervision on the proper enforcement of the law, of the promotion of legitimate freedoms, protection of individual and public rights, providing due process for the resolution of judicial disputes, and investigation, prosecution, and punishment of criminals in accordance with the Islamic penal code. It is also incumbent upon the Judiciary branch to take adequate measures to prevent crime and to rehabilitate criminals. The highest Judicial authority is a Justice well versed in judiciary affairs and skillful in the administration of justice. He is appointed by the Leader for a period of five years. The Ministry of justice is the official authority to which all grievances and complaints are referred. The Minister of justice is in charge of administrating the Ministry as well as coordinating the relationship between the Judiciary branch and the legislative and executive branches. The courts are functionally classified according to their area of jurisdiction, civil or criminal, and according to the seriousness of the crime or the litigation, e.g., value of property under dispute or the level of punitive action involved. There are four civil courts: first level civil courts, second level civil courts, independent civil courts, and special civil courts. The latter attend to matters related to family laws and have jurisdiction over divorce and child custody. Criminal courts fall into two categories: first and second level criminal courts. The first level courts have jurisdiction over prosecution for felony charges, while the second level courts try cases that involve lighter punitive action. In addition to the regular courts, which hear criminal and civil suits, the judiciary encompasses clerical tribunals, revolutionary tribunals, and the Court of Administrative justice. Clerical courts entrusted with the task of trying and punishing misdeeds by the clergy. Revolutionary tribunals are charged with the responsibility of hearing and trying charges of terrorism and offenses against national security. The Court of Administrative justice under the supervision of the head of the judicial branch is authorized to investigate any complaints or objections by people with respect to government officials, organs, and statues. The Constitution also requires the establishment of a Supreme Court with the task of supervising the implementation of laws by the courts and ensuring uniformity in Judicial procedures.

KEYWORDS: Iran’s judicial system, enforcement of the law, authority
1. INTRODUCTION

Following the Islamic revolution in 1979, a new Constitution was adopted in the same year, which was modified and amended in 1989. Iran is an Islamic Republic. The Constitution guarantees equality before the law, civil and political rights, such as the right to life, freedom from torture and fair trial rights and economic, social, and collective rights. These rights are granted in accordance with Islamic principles. The Constitution also provides for the right of access to justice and the right to petition by way of submitting a complaint in writing to the Majlis (the Parliament). Iran has two co-existing systems of law, namely the law of Islamic lawyers (Islamic mojtahids) and codified positive law.

The judiciary is comprised of ordinary, military and revolutionary courts of first instance and appeal courts. The highest court is the Supreme Court. It does not have the power to review the constitutionality of laws or the power to hear petitions concerning violations of rights. The Guardian Council, which consist of six faqih (Islamic jurists), appointed by the leader, and six jurists, elected by the Majlis from among Muslim jurists proposed to the Majlis by the non-elected Head of the Judiciary, examines the acts of the Majlis with a view to safeguarding the rules of Islam (in accordance with Islamic Shia jurisprudence) and the Constitution. The Guardian Council examines all legislation passed by the Majlis and returns it thereto for review if it finds any inconsistency with its understanding of principles of Islam and the Constitution. In case of a difference of opinion between the Majlis and the Guardian Council on the compatibility of a bill (passed by deputies) with Islamic rules or constitutional provisions, the Council for Assessing the Interest of the Islamic Regime (CAIIR) - or Expediency Council- shall decide. All 34 members of the CAIIR –among them the Head of the Judiciary Power –are appointed by the Leader.

There is also a Court of Administrative Justice that has the power to investigate complaints, grievances and objections with respect to government officials, organs, and statutes. Military courts are competent to investigate crimes committed by members of the Army, Gendarmerie, police, security forces and the Islamic Revolution Guards Corps, in connection with military or security duties. In the Iranian judicial system, beside the ordinary, revolutionary and military courts, that are within the jurisdiction of the Judiciary, the administration Regulation of the clerical (eclesiastic) courts decreed on 27 July 1990 by the Leader established an independent judicial body for clerics offences.
The Constitution recognizes the independence of the judiciary. There are safeguards against the transfer and dismissal of judges who are, however, personally liable for any moral or material loss suffered by an individual as the result of a fault or an erroneous judgment. An important role is played by the Head of the Judiciary who holds a wide range of powers, including the appointment of judges, often exercised by means circulars/decrees (Bakhshnameh) for the attention of judges, police, heads of judicial areas and prison organizations, etc.18 According to Article 2 of the Duties and Powers of the Head of the Judiciary Act (27 February 1999), the Head of the Judiciary is considered to be a judicial office. Furthermore, the Head of the Judiciary can at any time ask for the revision of a judgment duly rendered, including final ones, if he believes that it is contrary to Islamic laws.

2. OVERVIEW OF THE LEGAL SYSTEM

The legal system of Iran prior to the 1979 revolution was a mixture of Islamic Jurisprudence and Western legal systems, in particular the legal system adopted by the civil law countries. The Civil Code of Iran, which was first prepared in 1928, was a codification of Shari'a in the format of the Napoleonic Code. The Code of Civil Procedure was based on the French Civil Procedure. In civil cases, questions of fact were reviewed at two stages with an appeal to a court of cassation on questions of law only. The criminal law and criminal procedure law were divorced from Islamic law. Punishments such as stoning and dismemberment were made illegal and religious judges were not permitted to impose penalties in matters which were considered as criminal under Islamic law.

In the aftermath of the revolution, clerical supporters of Ayatollah Khomeini were able to control the writing of the new Constitution, issued in December 1979. The Constitution made clear that Islam was to be the basis for the entire legal system. Article 4 of the Constitution of the Islamic Republic states:

All civil, penal, financial, economic, administrative, cultural, military, political laws and regulations, as well as any other laws or regulations, should be based on Islamic principles. This principle will in general prevail over all of the principles of the Constitution, and other laws and regulations as well.

Secular judges, nevertheless, continued until August 1982 to enforce the pre-revolution laws and regulations with which they were familiar. On August 22, 1982 Ayatollah Khomeini
expressly ordered that all pre-revolution laws should be disregarded and declared that judges who continued to enforce pre-revolutionary secular legislation would be liable to prosecution. By this time, three-and-a-half year after the revolution, about 2,500 laws had been passed. Ayatollah Khomeiny decreed that in those areas which were not covered by post-revolutionary legislation judges should act on the basis of their own knowledge of Islamic law. If necessary, judges were encouraged to seek an opinion on a matter from Ayatollah Khomeini himself. The legislative process up until that point had not been systematic, and even many of the new laws referred to pre-revolutionary legislation which no longer had validity, leaving individual judges with wide discretionary powers.

In Iran the official religion is Shi'a Islam, and the majority of Iranian are Shi'a as opposed to the majority of Muslims worldwide who are Sunni. The Shi'as differ from the Sunnis over the concept of constitutional law (called Caliphate in the Sunni school and Imamate in the Shi’a school). The Shi’a belief in the Imamate doctrine originates in a conflict over the issue of succession to the Prophet Muhammad. The Sunnis believe that the Muslim community could, and did, elect the Caliph (leader). The Shi’as disagree believing that Muhammad duly appointed Ali, his son in law, as his successor, and that the succession should follow the male descendants of Ali. The Twelfth Imam, the last of the line of succession, disappeared in 873 AD. The Shi’a believe that he did not die, but that he is in a state known as occultation awaiting his return to earth on the day of final judgment.

The Shi’as believe that the Imams are indispensable for understanding the message of the prophet. The Shi’as hold themselves ready to submit to the authority of the Twelfth Imam on his return to earth. For Shi’as believers this loyalty to the ever-present twelfth Imam supersedes the authority of secular governments.

After the Islamic revolution of 1979, the Iranian government was based on a premise that the high-ranking Shi’a clergy would govern the country as the agents of the Twelfth Imam. The preamble to the Iranian Constitution reads:

Based on the concept of Velayat-e Amr va Imamate Mostamir, the Constitution will lay the ground for the realization of leadership by the qualified clergy recognized by the people as their leader (People’s affairs have been entrusted to faithful Ulama or religious authorities who know that which is allowed and that which is forbidden) so that the clergy may safeguard against any deviations by state institutions from their true Islamic functions.

In an ideal Islamic Republic, according to the theory of Islamic government as expounded by Ayatollah Khomeini, the legislative power and competence to establish laws belongs
exclusively to God. No one has the right to legislate and no law may be executed except the law of the Divine Legislator. In an Islamic government, the legislature is a consultative body. Yet, in the Constitution of the Islamic Republic of Iran this classical view is modified. Article 56 states that "absolute sovereignty over the world and mankind is God's, " but also provides that "the nation shall exercise this God-given right. " So in Iran the parliament is the legislature, but its position is weak because its decisions are ultimately subject to review by religious authorities, who exercise this power with great frequency.

2.1 Sources of Islamic Law

The Constitution of the Islamic Republic requires that all laws and regulations in Iran should be based on Islamic Principles. These principles prevail over constitutional law, and legislation enacted by the various legislative bodies. The sources of Islamic law according to Shi'a tradition fall into two main categories: the Qur'an and the Sunna with reference as necessary to secondary or dependent sources, Ijma and Aql.

2.2 Qur'an

The Qur'an is the principal source of Islamic law. The Qur'an contains approximately 80 verses that deal with legal topics in the strict sense of the term. The Qur'an is the holy book of Muslims and in the view of the faithful, it is the words of God revealed to the Prophet Muhammad. Many of these revelations were very short, and open to interpretation. A principal contained in a single sentence has been the foundation on which a whole structure of law might be built.

2.3 Sunna

If the Qur'an give no explicit guidance on a given matter, then a secondary source of law is the teaching and example of the Prophet himself. This was ordained in several passages of the Qur'an, for example, "whatsoever the Messenger gives you, take it and whatsoever he forbids, abstain from it ".[13] Hence the authority of the traditions of the Prophet, collectively known as the Sunna in Islamic law. In the event of contradiction between the Qur'an and the Sunna, the two must be harmonize if possible but otherwise the Qur'an prevails.
The word Sunna means literally a manner of acting, a rule of conduct, a mode of life. Applied to the life of the Prophet this meant, therefore, a rule deduced from his sayings or conduct. Such sayings or conduct could take the form of a specific utterance of the Prophet, an action or practice of the action or practice of someone else, as narrated in a Hadith or tradition. The term Hadith thus refers to the report of a particular occurrence.

The Hadith were not recorded at the time of the Prophet, and over time differing accounts of the Prophet's sayings and deeds have been handed down in traditions, leaving broad scope for interpretation and contention.

2.4 Ijma (Consensus)

Ijma is the consensus of the community expressed through its competent religious representatives. If it is impossible to find either a passage from the Qur'an or a Hadith bearing on a matter, then a third source is consulted - the general consensus among Islamic scholars about the legal rule correctly applicable to the situation. In theory, Ijma is a dynamic consensus which might change with circumstances.

2.5 Aql (Reasoning or wisdom)

If all three sources enunciated above fail to provide a rule to solve a problem, jurists must derive an appropriate rule by logical interferences and analogy, a process known as Aql. It requires special training to be able to perform this function. Only a scholar deeply learned in all the nuances of law through many years of training is deemed equal to the task. Such a scholar is known as mojtahed, one capable of initiative in thought about the law. Such initiative is known by the name of Ijtihad. Ijtihad provides Islamic law with a means of adapting to the changing needs of society. The Mojtahed is authorized to interpret the source of law. This interpretation is known as a Fatwa.

3. NEED FOR REFORM

The Constitution of the Islamic Republic of Iran, adopted in October 1979, contains provisions pertaining to key principles of fair trial. For instance, the Constitution protects the

This work is licensed under a Creative Commons Attribution 4.0 International License.
right to liberty and stipulates: “No one shall be arrested except by the order and in accordance with the procedures laid down by law” [1].

Presumption of innocence, equality before the courts, prohibition of torture and other ill treatment, the right to an open hearing, and access to legal counsel are constitutionally guaranteed. Yet, restrictive and vaguely worded provisions in various laws, including the Islamic Penal Code, the Code of Criminal Procedure and the Press Code, as well as major flaws in the structure and administration of the criminal justice system, including a lack of accountability, independence and transparency, result in the continued proliferation of unjust sentences following grossly unfair trials.

Iran has ratified a number of international treaties guaranteeing fair trial rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).

According to Article 9 of Iran’s Civil Code, “the provisions of treaties agreed between the government of Iran and other governments in compliance with the Constitution have the force of law.” Despite this, key human rights guarantee contained in the international human rights instruments to which Iran is a party have not been incorporated into domestic law. In 2011, the UN Human Rights Committee (HRC), which oversees implementation of the ICCPR, stated that “the status of international human rights treaties in domestic law is not specified in the legal system, which hinders the full implementation of the rights contained in the Covenant” [2].

Despite the international fair trial guarantees to which Iran has agreed to adhere, trials before Iranian courts do not generally meet the international standards for fair trial, most notably those laid down in Articles 6 (in capital cases) and 14 of the ICCPR.

Moreover, Iran has not yet ratified a number of key human rights treaties that guarantee core human rights principles, such as equality and non-discrimination, and set out fair trial standards, such as the right to liberty, prohibition of torture and other ill-treatment, and the right to access legal counsel. These treaties include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [3].

In April 2014, the new Code of Criminal Procedure (CCP), which had been in the making for almost a decade, was passed by parliament and signed into law by the President with a
three-year trial period. The date of entry into force of the Code was supposed to be six months after its publication in the Official Gazette on 23 April 2014.20

The new CCP was much celebrated for containing a number of long overdue reforms. Indeed, it is an improvement on the old Code. Among other things, it restricts the use of provisional pre-trial detention to situations where there is a risk of flight or a threat to public safety, sets out stricter regulations governing the questioning of accused, and obligates the authorities to notify detainees of their rights following arrest and detention.

Despite these overdue reforms, the new Code constitutes a lost opportunity as it fails to tackle major shortcomings in Iran’s criminal justice system, including the lack of independence of the judiciary, of legal safeguards against torture and other ill-treatment, and of respect for the right to adequate reparation and remedy for victims of human rights violations. The failure has been compounded by an apparent lack of political will by the authorities to embrace and uphold the improvements achieved under the new Code. This was first demonstrated in August 2014, when a member of parliament’s Legal and Judicial Commission announced that the entry into force of the Code would be delayed for almost a year. The postponement was apparently at the request of the Head of the Judiciary, who predicted numerous difficulties in implementing the new law, including insufficient resources to provide the number of qualified judges needed, and devise and put into place the new institutional and administrative processes [4]. The Code finally came into force on 22 June 2015, [5] but with some late and unwelcome amendments.

The derivations arising from Iran’s judicial system are not limited to what has hitherto been discussed. Each of these issues potentially demonstrates the extent to which a religious-based judicial system can be problematic and dangerous. Also it can violate the most basic principles of human rights. Such anomalies become more apparent in light of special judicial cases, for instance that of Qisas in the case of Ameneh Bahraminava, or the [public] hanging of the killer of Ruhollah Dadashi. It is in light of such cases that superior moral standards and norms demonstrate their inherent contrast with the current practices of Iran’s judicial system—practices that thus far, due to various crises, have managed to somehow be viewed as ‘normal or rational.’

The demand to replace a judicial system with one that is based on common modern principles (where at least a single fair trial is conducted) is a basic socio-political expectation of a ‘first generation.’ It implies that the expectation of the current uprisings and movement of the people of Iran towards general reform in the legal system is that traditional-religious
provisions should be practiced—provisions that have historical roots within the Iranian judicial system.

In fact, from the early years of the Pahlavi regime, a modern judicial system was formed where legal principles interacted with religious provisions and standards (this was especially so in areas of individual rights and civil laws). However, changes were directionally towards common judicial principles, moving away from religious precepts. These developments were not only in the realm of criminal law, but also in family law and women’s rights, to which we witnessed ratification of advanced laws during that era.

After the revolution [of 1979], however, the successful religious government managed to exploit certain strata of society—engulfed in economic crisis, to advance its own agenda through propaganda and use of certain training schemes—schemes that were indeed pre-conceived and are justified only within the framework of government propaganda.

Facing the current situation, what is most urgent, is to identify and expose crisis-causing religious elements in Iran’s judicial system, and make utmost efforts to widely instill the notion that without seriously demanding a ‘secular judicial system’—one that is based on common humanistic and compassionate principles, establishment of a free society that respects human rights and considers its citizens equal is not possible.

4. TOWARDS CONCLUSION

The present study revealed that Iranian judicial system has so complicated rules about courts, and we can't simply understand its structure, because its rules change away very fast. Nonetheless we can find essential rules in this topic; such as formation of courts, number judges, hierarchy between courts and etc. The weaknesses in Iran’s justice system can be resolved if the authorities have the political will to do so. Iran has ratified several international human rights treaties that guarantees, among other rights, the right to a fair trial. As a state party to these treaties, the Iranian authorities have pledged to uphold the fair trial rights guaranteed to all accused persons. This commitment is of little value if key human rights protections and safeguards contained in the instruments are not fully incorporated into domestic law and then fully implemented. Other treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance,
need to be ratified. The Iranian authorities also need to amend laws and practice so that the multitude of rights required to ensure fair trials – from the moment of arrest, through the period of interrogation and trial, to the final stage of appeal – are respected. They should take urgent action to banish the blight of torture and other ill-treatment in Iran and abolish cruel, inhuman and degrading punishments. Such action requires the adoption of new legal provisions to establish adequate oversight over law enforcement and judicial officials and to ensure that allegations of human rights violations are properly investigated, those found responsible adequately sanctioned and that victims have the right to remedy and reparation.

REFERENCES


[2]. Human Rights Committee (HRC), Concluding observations on the Islamic Republic of Iran, Consideration of reports submitted by States parties under article 40 of the Covenant, CCPR/C/IRN/CO/3, para. 6, available at bit.ly/1L0vijY (HRC, CCPR/C/IRN/CO/3).

[3]. During its first Universal Periodic Review (UPR) in 2010, Iran initially accepted to take away recommendations to ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). However, in June 2010, while rejecting the recommendations, the Iranian delegation announced that “Iran had no objection to join the CAT with only one caveat, which was the fact that CAT considers torture a legal punishment established by Iran’s legislation. However, the Government is studying the issue.” Following its second UPR in 2014, Iran rejected all recommendations calling on the country to ratify CAT, CEDAW and ICPPED.


[5]. The manner in which the entry into force of the new CCP was postponed did not fully conform with Iranian laws, which stipulate strict legal procedures to postpone the entry into force of adopted legislation: either parliament must enact legislation to specify the new date or the Supreme Leader must exercise his authority in the form of a state order (hokm-e hokoumati). A request by the Head of the Judiciary followed by approval by the Parliamentary Commission does not constitute a legal basis for postponing the entry into force of an adopted law. In the case of the CCP, the new date for its entry into force was eventually set out under another piece of legislation, the Code of Criminal Procedure for Armed Forces and for Electronic Procedure, but this was only signed into law on 8 November 2014, about two weeks after the original date the new CCP was supposed to enter into force.