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THE FUTURE OF IRAN: JUDICIAL REFORM

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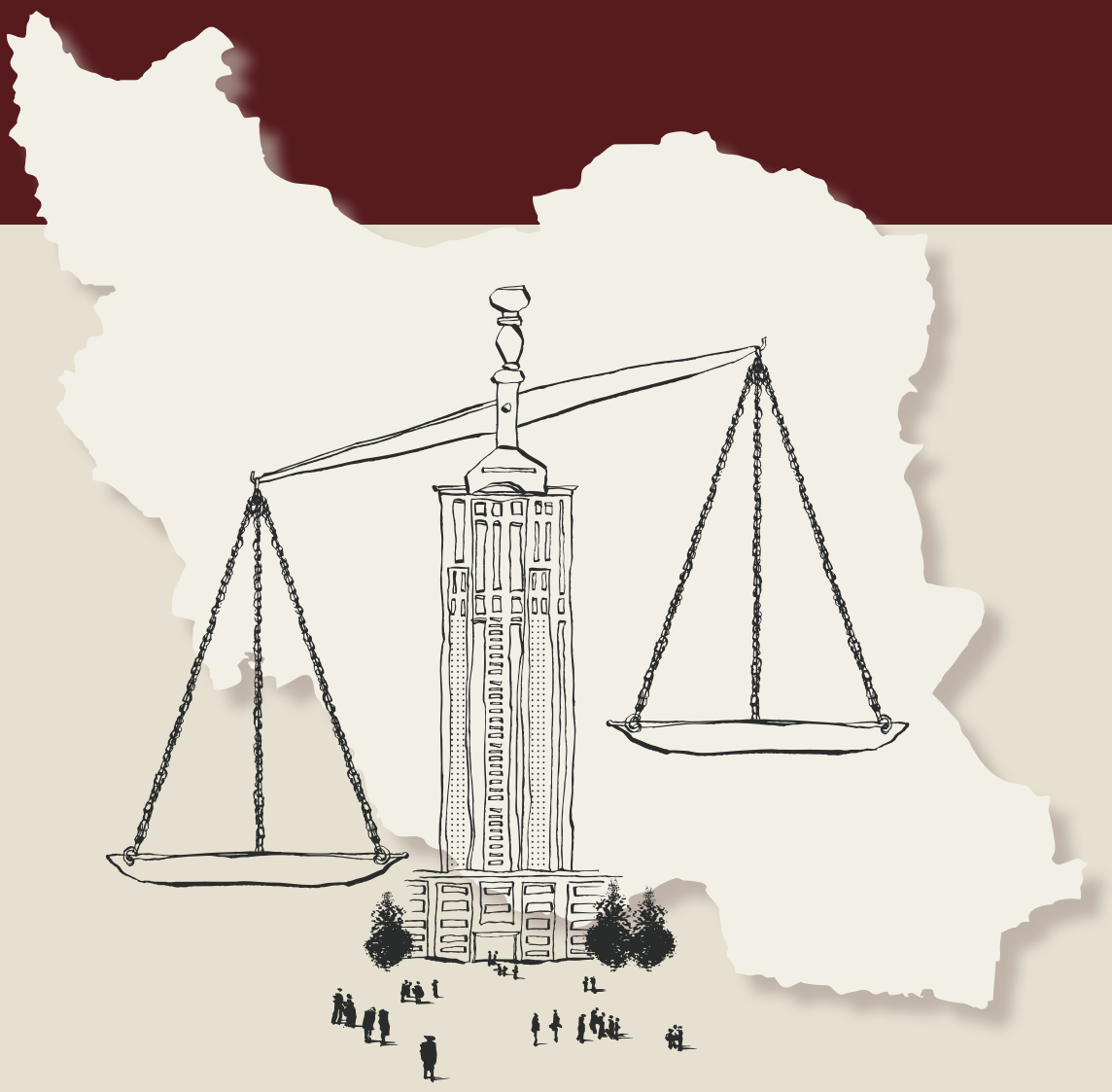

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The History of the Judiciary in Iran

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Karim Lahidji received his doctorate in legal studies from Tehran University in 1965. In 1977, he established the Iranian Association of Jurists (IAJ) and the Iranian Association for Liberty and Human Rights (IALHR) with the purpose of promoting the Universal Declaration of Human Rights in the society at large. After the revolution, he was among the first to condemn the executions and other violations of human rights by the new regime. Exiled in France in 1982, Dr. Lahidji established the League for the Defense of Human Rights in Iran (LDDHI) in order to expose the Islamic Republic's human rights record. In 1984, LDDHI joined the Europe based International Federation for Human Rights (FIDH) where he has been elected vice-president for five consecutive terms. He has written three books and more than a hundred articles for a number of Persian publications and websites in exile. In 1990, Dr. Lahidji was the recipient of Human Rights Watch award for outstanding monitors of human rights in the world.

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1. FROM CONSTITUTIONAL REVOLUTION TO 1979 (ISLAMIC) REVOLUTION

In the protest movement that began in 1905, culminating in a sit-in by prominent ulema (religious scholars), the protestors demanded the establishment of a house of justice. By that they meant the establishment of a judiciary, to be placed under their control in order to enforce the Islamic Shari'a laws and punishments. Therefore, following the declaration of a constitutional system of government and in the course of parliamentary debates on the draft law of the supplementary constitutional law, even the pro-constitution clerics among the parliamentarians openly rose up against the secular judicial system.

The ulema's dispute with the progressive front of the Parliament, Majles, intensified and Seyyed Abdollah Behbahani (a senior and prominent theologian who had supported the constitutional revolution) decided to boycott Majles sessions in protest. Faced with such a situation, Majles Speaker (Mirza Mahmoud) Ehtesham ol-Saltaneh sent a message to the ulema that "there should be no court other than Justice Ministry courts and fully qualified Islamic jurists must also fulfill their duties in the Justice Ministry and receive remuneration."[1]

Thus, the supplementary bill of the Constitution was drawn up in a Majles where the balance of power was not in favour of the progressive front. Prominent among its provisions was the ruling of its Article 2, according to which five ulema would be present at open sessions of the Majles to screen all laws being enacted. The five were given the right to veto any laws that they deemed to be incompatible with "the sacred Islamic principles". In the chapter concerning state powers (executive, legislative and judicial), they defined the judicial power as follows:

"The judicial power and justice administration, whose jurisdiction embraces the discernment of rights, is particular to Shari'a courts in areas to do with theological matters and to (secular) judiciary in areas to do with lay matters," (Article 27). In the chapter dealing with the authority of the judicial courts, the Supplementary

Constitutional Law reiterates its recognition of both the Shari'a and secular judiciaries. "The Supreme Court of Justice and the judiciary courts are officially recognized authorities with regards to public (non-clerical) cases, while judgment in religious affairs will be made by fully qualified theologians," (Article 71).

On the one hand, the authors of the Supplementary Constitutional Law did not give a definition of "Shari'a affairs" while, on the other, in Article 72 they stipulated that "disputes regarding fundamental rights are within the jurisdiction of the (secular) judiciary". However, to keep the theological establishment satisfied, they stipulated in Article 83 that "with the endorsement of the Shari'a judge, the Shah (Sovereign) has the power to appoint the Public Prosecutor".

The dispute over the respective jurisdictions between the clerical establishment and laity continued long after the ratification of the Constitution and its addenda. Moshir ol-Dowleh, the first minister of justice in the constitutional era, encountered intense opposition from clerics, including Seyyed Hasan Modarres, when he sought Majles approval for the draft law

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on Fundamentals of Court Procedures. Eventually, the Deputy Speaker of the Majles managed to reconcile the opposing factions by incorporating an eight-article amendment written by Modarres into the draft law. And so the Majles Justice Committee approved the amended draft. The Fundamentals of Court Procedures divided lawsuits into three categories. One category concerned issues such as marriage, divorce, ownership rights and all disputes, which required a fatwa by the ulema; these were within the jurisdiction of Shari'a courts. The second category covered disputes within the jurisdiction of secular affairs such as claims related to taxes; these were relegated to secular courts. The third category covered disputes, which were on the borderline between Shari'a and secular affairs; these disputes were placed within the jurisdiction of Shari'a courts unless both parties to the dispute accepted the jurisdiction of secular courts.

Ali Akbar Davar, minister of justice in the early part of Reza Shah's reign, dissolved the Justice Ministry. He then set up a special committee, headed by Moshir ol-Dowleh, to reform the legal codes of the country. Having accomplished that task, Davar, with the assistance of Moshir ol-Dowleh and another distinguished judge, Mohsen Sadr, recruited highly qualified judges to preside over the courts. To avoid the wrath of the ulema, however, he also offered a number of judicial positions to qualified clerics. Gradually, he succeeded in securing Majles endorsement of new laws defining procedural regulations for hearing of penal and civil cases. The newly revamped Justice Ministry succeeded in increasingly curtailing the influence of the ulema in judicial matters.

In 1931, to establish the authority of the government and restrict the independence of the judges, the draft law on interpretation of Article 82 of the Supplementary Constitutional Law was ratified by the Majles Judicial Laws Committee. According to Article 81, "no judge

can be removed or transferred from his position, temporarily or permanently, unless he willingly tenders his resignation or a court of justice finds him guilty of involvement in acts incompatible with his position." However, in the amended version, they clarified that the purpose of Article 82 is that, "no sitting judge can be moved to administrative jobs or to positions in the Prosecutor's Office without his consent, and moving sitting judges from one court to another, provided his rank is duly observed, would not be in contravention of this Article." Simultaneously, the Cabinet submitted the draft of the Law Investigating the Crimes of Plotters against the Security and Independence of the Country, which was ratified by the Majles. But Justice Ministry courts were tasked with dealing with these crimes.

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In 1949, hearing of cases related to crimes against the security and independence of the country were referred to military courts. During his premiership, Mohammad Mosaddeq invoked his legislative powers and a law dissolving all specialized courts was endorsed. (Note: At that time, military courts were classed as specialized courts. By annulling military courts, cases related to the law Investigating the Crimes of Plotters against the Security and Independence of the Country would automatically be heard by Justice Ministry courts.)

After the coup of August 19, 1953, which toppled Mosaddeq, military courts were reinstated. And with the ratification of the State Security and Information Organisation Law and the Military Prosecution and Penal Law, all political (security) trials were referred to military courts. In these courts only military lawyers were allowed to defend the accused.

2. JUDICIARY IN THE REVOLUTION AND POST-REVOLUTION PERIODS

2.1. The Transition Period

Some 70 years after the Constitutional Revolution, during the protest movement of 1978–79, not only judges and lawyers in the movement called for the release of political prisoners, revival of the judiciary's independence, restoration of judiciary courts' authority, and dissolution of specialized judicial organs, but also university academics, students, writers, and progressive groups.

In around March 1978, with the growth of the university movement and protests, which led to police intervention and increasing arrests of students, the government decided to refer such cases to judiciary courts. These trials were held in judiciary courts, and in most instances criminal cases were held in open courts. Judiciary lawyers represented those accused of disturbing order and clashing with the police. During the government of Ja'far Sharif-Emami and following several rounds of talks, in the presence of the army's

prosecutor-general, between the justice minister, representatives of various forums that defended freedom and human rights, and members of the Iranian Bar Association, the justice minister and the army's prosecutor-general accepted that from then on, judiciary lawyers be allowed to defend political prisoners in military courts. From that time until the beginning of the revolution, judiciary lawyers were allowed into military courts.

A few days following the Revolution's victory and establishment of an interim government, newspapers carried reports on the first revolutionary trial and the prompt execution of four senior army commanders. The location of the revolutionary court and enforcement of the death penalty was the very school where the revolutionaries had set up their headquarters in the wake of Ayatollah Khomeyni's return to Iran. The interim government's prime minister said that he had no knowledge of these trials in various interviews including French daily *Le Monde* [(2)] . The Islamic Revolution Court was headed by a Shari'a judge appointed by Khomeyni. The headquarters of the court, the identity of the Shar'ia judge presiding over the proceedings, and the procedural rules and regulations governing due process were clarified.

Every few days, newspapers reported news of more executions. A revolutionary "aura" had captured hearts and minds of the supporters of the revolution. Vengeance, not justice, was the order of the day. All revolutionary groups from Islamic to Marxist and Communist were demanding decisive verdicts from the revolution courts.

These courts were, in fact, parallel governments acting beside the "interim government". Following repeated protests lodged by the head of the interim government (Mehdi Bazargan), the Revolution Council was forced to endorse the first Codes of Procedure for the Revolution Courts and Public Prosecutor's Officers, on June 17,1979.[(3)] Article 1 of the code reads: "On the orders of the leader of the Islamic revolution of Iran, it has been decided to set up an Office of the Revolution Public Prosecutor and the required number of Revolution Courts, at the administrative centre of every province."

One area of jurisdiction of these courts was the hearing of cases filed against those accused of either having "perpetrated crimes prior to the victory of the revolution to consolidate the Pahlavi regime and perpetuate the influence of foreigners, or perpetrated or continued to perpetrate crimes after the victory of Islamic revolution against the Islamic revolution."

On July 4, 1979, the Revolution Council endorsed the Bill on the Establishment of an Extraordinary Court to investigate counter-revolution crimes.[(4)]

According to Article 2 of the bill, the minister of justice was empowered to select and appoint judges of the Revolution Courts from among serving or retired judges as well as other legal experts well versed in Islamic precepts. However, neither the article nor any other articles of the bill were ever enforced. For instance, Article 11, which stipulated that verdicts of the Revolution Courts must be in accordance with the "prevailing laws of the land", Article 12, that gave the accused the right to appoint a lawyer, or Article 14, which provided those who had been sentenced to life imprisonment or the death penalty the right of appeal, were never enforced in practice. Also of importance was Article 16

of the bill, which authorized "the council of ministers to annul, if and when it deemed it necessary, by Cabinet decree all the courts investigating counter-revolutionary cases." Needless to say, this article was likewise never enforced.

Notwithstanding the said bills, the Revolution Courts continued to operate and the Shari'a judges, who regarded themselves as appointees of the Imam Khomeyni, and whose verdicts were based on fatwas issued by him or other sources of emulation, did not recognize any laws and regulations, including the prevailing law concerning "fair trials". Consequently, they did not consider themselves answerable to the justice minister or the interim government in general. They were appointed and dismissed by Ayatollah Khomeyni, and the government played no part in that.

2.2 Judicial Power as Defined by the Constitution of the Islamic Republic

According to the original draft of the Constitution, which, following its endorsement by the Revolution Council, was submitted to the Assembly for Final Scrutiny of the Islamic Republic's Constitution (known as the Experts Assembly), the judicial power is an independent entity. The same draft law also tasks the President, in cooperation with the Supreme Judicial Council, to facilitate and realize the judicial power's independence (Article 126).

The Supreme Judicial Council, which is responsible for "appointment, dismissal, transfer, promotion and commission of the judges", consists of three counsel judges or presiding judges of branches of the Supreme Court to be named and selected by the judges of the Supreme Court; six judges who would have served a minimum of ten years in judicial tasks—the ways and means of their selection to be determined by law; the State Prosecutor-General, and, the President of the Supreme Court of Justice, who also chairs the State Supreme Judicial Council. Members of the council are be elected to serve a five-year term (Article 138).

The fate of the Constitution's draft law was sealed the very day of the Experts Assembly's establishment. In a message addressed to Experts Assembly members, Ayatollah Khomeyni instructed them to "openly expose any articles in the draft of the Constitution or any proposals related to it, which they find to be against Islamic principles. And in doing so, they must not fear newspapers and writers who are infatuated with the West." [(5)]

Accordingly, Khomeyni's disciples in the Assembly turned the entire text of the proposed draft law upside down and came up with another Constitution, which revolves on the basis of the Principle of Velayat-e Faqih (Guardianship of the Supreme Jurisconsult) in the period of the Greater Absence of the Hidden 12th Shi'a Imam Mahdi.

The new draft Constitution stipulated, "implementation of judicial affairs shall be accomplished through courts of justice, which must be established according to Islamic criteria. These courts shall be vested with the authority to examine and settle lawsuits, protect the rights of the public, dispense and enact justice, and implement the Divine Limits (Article 61)."

Thus, they also placed "implementation of the Divine Limits" under the jurisdiction of the judiciary. Furthermore, they changed the composition of the Supreme Council of Justice. The council members comprised the President of the Supreme Court, Prosecutor-General and three theologically qualified and upright judges to be elected by the community of ministry judges(Article 198). The President of the Supreme Court and the Prosecutor-General must also be "just mujtaheds (Islamic jurists) who are well versed in judicial matters." More importantly, as stressed in Article 163, "the conditions and qualifications to be fulfilled by a judge shall be determined by law, in accordance with the criteria of Islamic jurisprudence (Fiqh)."

The majority of the deputies in the assembly were mullahs with no knowledge or experience in judicial affairs. On the one hand, they stipulated in Article 166 that "verdicts by courts must be well reasoned out and documented with reference to the articles and principles of the law in accordance with which they are delivered." On the other, in the subsequent article, they stipulated, "the judge is duty-bound to adjudicate each case on the basis of the codified law. In the absence of any such law, he has to deliver his judgment on the basis of valid Islamic sources or authoritative fatwas." That was how the fatwas of the ulema and treatises written by theologians replaced legislative laws.

After Ayatollah Khomeyni's death, his disciples were compelled to review the Constitution. As a result, a major revision took place in the chapter concerning the judicial power. In other words, in the revised version of the Constitution the Supreme

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Judicial Council was dissolved and "the responsibilities of the judicial power in all judicial as well as administrative and executive affairs" were transferred to the head of the judicial power. The leader was also given the power to appoint a "just mujtahed well versed in judicial affairs and possessing wisdom and administrative abilities for a period of five years" to the post (Article 157).

Therefore, the responsibility for the judicial power is given to a mujtahed, appointed by the leader. And the head of the judicial power, for his part, appoints the head of the State Supreme Court and Prosecutor-General who must be "just mujtaheds well versed in judicial affairs". They totally wiped out the independence of the judges and gave the head of the judicial power the authority to transfer or rotate the judges "when the interests of society necessitates", after consultation with the head of the Supreme Court and Prosecutor-General. (Article 164)

2.3 Islamisation of judiciary

After endorsing the Constitution in a referendum held in December 1979, Ayatollah Khomeyni appointed Seyyed Mohammad Beheshti to the position of the President of the

Supreme Court and Abdolkarim Mousavi-Ardebili to the position of Prosecutor General, for a five-year term. They were both members of the Revolution Council. Although, according to the Constitution, "the President of the Supreme Court and Prosecutor General must be just mujtaheds well versed in judicial affairs"; one was a high school teacher of Islamic Shari'a Beheshti, and the other, the prayer leader in a mosque. In contravention of the text of the Constitution, Khomeyni had not consulted judges of the Supreme Court when appointing the two said individuals.

The appointments of Beheshti and Mousavi-Ardebili paved the way for implementation of the Islamization plan of the judicial establishment. According to Article 163 of the Constitution, "the conditions and qualifications to be fulfilled by a judge shall be determined by law, in accordance with the criteria of Islamic Jurisprudence." According to Islamic jurisprudence, judges must be mujtaheds. And so that became a subterfuge for the mullahs to make their way into the judiciary. Hundreds of judges were dismissed, and those judges who were not purged, were given the position of advisers.

It was a common sight to see a junior Islamic seminarian whose stock of legal and theological knowledge consisted of rudiments of Arabic grammar and some elementary lessons in theology to preside over a court while an experienced judge with a university degree and years of judicial expertise acted as his assistant. But in fact these assistants were running the entire show.

The mullahs, as newcomers to the world of judicial establishment, began to preside over courts and branches of the Supreme Court. They had no judicial experience and were not familiar with procedural mechanism of justice, the due process and right to appeal, nor did they have any comprehension of secular laws and regulations. As a result, in the Islamic Penal Code, they confused crime with sin and vice versa. Crime is an act by which individuals are subjected to physical, reputational or financial harm, or are deprived of their rights and freedoms; and it is punishable by provision of the law. A sin is an act which is haram (forbidden by religion), and does not harm anybody, other than the sinner.

Alcohol consumption, illicit sexual relations between two mature and consenting adults, and similar conducts, which do not harm anyone else, have not been regarded as crimes in the codified laws of the past two centuries. And the judge's duty is to adjudicate and determine if a crime has been perpetrated (Substantive Law). On the other hand, judicial organs also have their own specific laws and regulations: modes of filing a complaint, staging a trial, the appeal state and so on and so forth (Procedural Law).

But the seminarians and mullahs have no knowledge of such differences and classifications. Their models are Islamic jurisprudence text books that date back thousands of years, on which they have written penal, civil and other legal texts for the twentieth century and which they have had enacted into law by the Majles for them to be enforced by the judiciary of the Islamic Republic.

The outcome was nothing other than chaos, and an inherently inefficient system. They changed the administrative rules of the judiciary several times and omitted the stages of trial, pronouncing the court verdict as final and binding. As a result, hundreds of

individuals were handed down summary justice, including lengthy prison terms or the death penalty. The injustice and devastating chaos became so unbearable that even a number of judges began to voice concern. They attempted to find a solution but instead made matters worse. They agreed to subject court verdicts to appeals. But then they merged the courts and offices of prosecutors. Taking their cue from Islamic jurisprudence, they empowered the presiding Shari'a judges. The judges would represent society and act as the public prosecutor, presenting the case for the prosecution. They would also act as interrogators and question the accused and collect evidence. Afterwards, they would take off the prosecutor and interrogator hats and preside over the court in the capacity of judges who, based on the Principle of Presumption of Innocence, must be impartial and issue verdicts.

The chaos lingered on for two decades until in 2002, when the penal courts were separated from the Prosecutor's Office by the "amended regulations", which stipulated that the powers of public prosecutor, which had been bestowed on the president of

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judicial districts by the Law of Public Judicial Courts, enacted in 1992, would once again be restored to the public prosecutor (Article 10 of the amended regulations).

By revising the Constitution and appointment, by the Leader of the Islamic Republic, of a mujtahed as head of the judiciary, and delegation of "the responsibilities of the judicial power in all judicial and administrative and executive matters" to the head of the judiciary, they somewhat resolved the problem of the exclusive authority of the mullahs over the courts. And since the head of the judiciary has been vested with the power to recruit just and worthy judges, and to appoint or dismiss them" (Clause 3 of Article 158), he gives his appointed judges permission to adjudicate.

In parallel with the Islamization of the organisation and administration of the judiciary, they also made Iranian civil laws compatible with the Shari'a principles. Iran's civil law, the bulk of which was taken from Shi'a Islamic jurisprudence, needed little revision. Among a few changes they introduced, one was to lower the age of puberty to nine lunar years for girls and 15 for boys. Another was to abolish the Family Protection Law and once again grant men the right of divorce as well as legitimizing polygamy.

As time went by, thanks to the relentless struggles of Iranian women, the age of consent for girls was raised to 13 and the decision on divorce was referred to the court and the verdict of the judge.

Yet, they totally changed the general Penal Code as well as the rules of civil and criminal procedure. Punishments such as stoning, crucifixion, amputation of limbs, and crimes such as moharebeh (waging war against God), Isfsad fil arz (corruption on earth), adultery and homosexual acts were incorporated into the Penal Code.

2.4 Specialized Courts

A) REVOLUTION COURT

Article 61 of the Islamic Republic of Iran's Constitution stipulates that, "the function of the judiciary is to be performed by courts of justice". The principle of absolute authority of the courts of justice is also stipulated in Articles 156 and 159 of the Constitution. That being so, Article 172 makes only one exception and states that, "Military courts shall be established by law to investigate crimes committed in connection with military or security duties by members of the Army, Gendarmerie, Police and Islamic Revolution Guards Corps (IRGC). But they shall be tried in public courts for common crimes or crimes committed while acting for the department of justice in executive capacity." Here it has been stressed that these special courts will hear the crimes of the armed and security forces personnel only when such crimes are related to military and police matters; otherwise, ordinary crimes of the personnel of the armed forces and police would be referred to the common courts. The footnote of Article 172 stipulates that military courts "form part of the judiciary and are subject to the same principles that regulate the judiciary".

Had the authors of the Constitution intended for the Revolution Courts to have a place within the judicial structure parallel with public courts, they would have dedicated an article or articles of the Constitution to the Revolution Court and stipulate that these courts are like military courts, "parts of the judicial power".

It is therefore obvious that with the endorsement of the Constitution and formation of the judiciary, the Revolution Courts have been disbanded. In fact, the Islamic Revolution Council, which set up Revolution Courts by a decree, had described them as "extraordinary courts". Extraordinary courts are exceptions to the general nature of the common courts. To set up an exceptional entity one needs to stipulate it in legal terms. The new Constitution declares all previous legislations that contravened its principles as null and void. The Revolution Courts' rules and regulations also stipulated that these courts would be "disbanded on the recommendation of the government and approvals of the rules of the Islamic Revolution after permission is granted by the imam. And in such a case, the judiciary will continue the unfinished work of the Revolution Courts." [(6)]

The contents of these rules and regulations, especially reference to the judiciary to complete the "unfinished" work of the Revolution Courts, highlight the provisional and transitory nature of the Revolution Courts. Even the approval of the Leader of the Revolution seems redundant mainly because Article 110 of the Constitution, which covers the powers and authority of the Leader, does not refer to specialized courts. In other words, according to the contents of the Constitution, whether in its original version or after its revision, the powers the Leader do not extend to the establishment of special courts.

But it was, in effect, necessary to perpetuate the existence of the Revolution Courts because they acted as tools for terror, intimidation, repression and executions. Not even an Islamized judiciary, controlled by the mullahs and fabricated laws of the Majles, could act in the same appalling way as the Revolution Courts did. They saw the solution

in trickery. In a simplistic manner, they drafted a single-clause law entitled the Law on the Limits of Jurisdiction of the Revolution Courts and Prosecutor's Offices. Its draft was submitted to and approved by the Majles in April 1983, at the height of the reign of terror, repressions and executions.

According to the said law, "Islamic Revolution Courts and Prosecutor's Offices are incorporated into the judicial system of the Islamic Republic to function under the authority of the Supreme Judicial Council." It was as if the judiciary's administrative organisation, including its budget and personnel departments, were not part of the

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judiciary. How is this issue related to the principle of the absolute authority of the Courts of Justice, as stipulated in several articles of the Constitution? How is it possible to incorporate a specialized court into the Constitution through normal laws?

And so in this manner, they presumed to have given the Revolution Courts legitimacy. They, in fact, made that trickery even more blatant by approving the Law on the Establishment of Public and Revolution Courts, in 1994. The title of that Law is in fact an open admission to the specialized nature of the Revolution Courts. Yet the Constitution has made provision only for one specialized court, which is for dealing with "special military or law enforcement disciplinary" crimes, and stressed that any other crimes committed by the military and police would be tried in public courts (Article 172).

Furthermore, Article 168 stipulates that political crimes "must be tried before a jury and in the courts of justice". With the endorsement of the new law and the parallel existence of the Revolution Courts alongside public courts, they placed all political crimes, such as "crimes against internal and external security, moharebeh, acts of corruption on earth, and denigration of the founder of the Islamic Revolution (Khomeyni) and the supreme leader (Khamene'i), and plots against the Islamic Republic" under the exclusive jurisdiction of the Revolution Courts. And that is how the Revolution Courts within the judiciary of the Islamic Republic were given the same role and authority as that of the military courts in the former system.

B) SPECIAL COURT FOR CLERICS

This specialized court is of the same category as the Revolution Courts, but with one difference: when the Constitution was drafted and subsequently enacted this tribunal for clerics did not exist. Of course, according to the ruling clerics' frame of mind, exigencies of government were supreme. That court could overrule everything and, as such, it had allowed them, for instance, to pronounce a religiously forbidden act permissible and legal. Moreover, the tradition of Islamic jurisprudence was conducive to such thinking. And so the supreme leader of the Islamic Republic could, under the pretext of exigency, sanction that exigency into law even though it might have been forbidden in the Constitution.

They merged religion with government feeding the nation a strange concoction, which they called Islamic Republic. Having created a religious state they were now creating a state religion—a system that required its own special trusteeships. Subsequently, they chose a cleric giving him the title of Special Prosecutor for Clerics. They then tasked the special prosecutor for clerics with the mission to elicit allegiance from theologians and sources of emulation opposed to the concept of "Velayat-e-Faqih and Imamate of the Ummah". Any theologian who did not agree to give his allegiance would be defrocked. It was thus that the Special Court for Clerics began to take shape—its mission being that of guarding the supreme status of the mullahs in a system based on legal discrimination.

This particular tribunal, which was in effect manufactured by the Leader, initially began its function without any procedural rules and regulations. In 1990, Mohamadi-Reyshahri, special prosecutor for the clerics, drafted a set of rules and regulations, which he sent to the leader's office. Within a few days these rules and regulations were enacted into legislation. The head of the leader's office wrote the following to Reyshahri: "The Law on Establishing Special Prosecutors Offices and Courts for Clerics as well as the jurisdiction of these offices and courts have met with the approval of the supreme leader. His Eminence has added a footnote to the said law specifying his approval of points written with regard to the special prosecutors' offices and courts for clerics." [7]

The rules and regulations, however, were never ratified by the Majles. Therefore, in a clear breach of the Constitution, the Leader assumed legislative powers for himself as well as entitling himself to set up specialized tribunals. This tribunal, which has been set up "to prevent infiltration of deviant and errant individuals into religious seminaries, safeguard the integrity of clerics, and bring to book delinquent clerics", is under the supervision of "the supreme leader" who has the power to instruct prosecution of the "wrongdoers". (Sections 1 and 13 of the Rules and Regulations of the Special Court for Clerics).

3. UNFUNDAMENTAL PRINCIPLES ON THE INDEPENDENCE OF JUDICIARY

On November 29 and December 13, 1985, the United Nations General Assembly, evoking the UN Charter, as well as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, adopted two consecutive resolutions on realization of global justice, recognition of equal rights for all individuals before the law, recognition of the principle of presumption of innocence, and right to fair trial. Recognizing that these points were not honoured in many human societies, the resolutions stressed that the final authority to safeguard human dignity, life, freedoms, property and basic rights of the individuals lies with the judge.

The resolutions called upon all member states to realise the independence of the judiciary by honouring the following principles:

- Independence of judiciary must be guaranteed by the state and must be stipulated in the Constitution or national law. All state and non-state bodies must respect the independence of the judiciary.

- Judges issue verdicts based on legislated laws. Their decisions must not be influenced by any direct or indirect restrictions, manipulations, coercions, pressures, threats and undue interventions by any person or for any reason.
- Judges have exclusive rights to deal with all complaints and they have the authority to determine this right within the framework of the law.
- No authority has the power to prevent implementation of judicial decisions. The decision to stage a new trial is also at the discretion of the judiciary. However, competent authorities may issue pardons or commute sentences passed by the judges.
- Every individual is entitled the right to be tried in common courts and in accordance with the due process. It is not permissible to limit the jurisdiction of common courts through staging of specialized courts that do not observe the due process.
- Judges have not only the right but also a duty of ensuring that both parties to the dispute are accorded a fair hearing.
- All governments are duty-bound to place sufficient funds at the disposal of the Judiciary to enable it to perform its functions.
- Judges, like other citizens, are entitled to freedom of expression, opinion and assembly. However, whilst enjoying these rights they must make every effort to observe the dignity of their status as judges and maintain their objectivity, impartiality and independence.
- Persons who are appointed as judges, in addition to having the required educational qualifications must also be upright and not susceptible to influence. Appointment of the judges must take place without any racial, gender, religious, ideological, political and social discrimination.
- The period of service, job security, independence, remuneration, working conditions and retirement of the judges must be determined by law.
- Once appointed to their positions judges may not be removed from them until retirement.
- The said resolution has also incorporated several articles on the need for judges to observe professional confidentiality as well as the dimensions of their professional immunity.

CONCLUSION

In this survey we have shown how Islamic judiciary replaced the former secular and semi-independent judicial system that had prevailed over Iranian society for some 50 years. However, lack of independence is not the sole problem of Iran's current judicial system. Another predicament of the judiciary is the compendium of laws based on jurisprudence, which dates back 1,000 years. At the top of these laws is the penal code, which generously dispenses death sentences.

The judiciary of the Islamic Republic, like its legislature, is under the sovereignty of the absolute Velayat-e-Faqih.

Article 156 of the Constitution of the Islamic Republic stipulates that, "the judiciary is an independent power, which is the protector of the rights of the individual and society, and is responsible for the enforcement of justice." Yet the same fundamental law has totally undermined the principle of judiciary's independence by vesting the bulk of the executive power in a single individual with the title of Vali-ye Faqih. Moreover, the same person has, in effect, granted himself extrajudicial powers.[8] Furthermore, he has also brought the legislative and judicial powers under his domination and control.

Bearing in mind the aforementioned, reform of Iran's judiciary warrants the following requirements:

1. Recognition of the people's right to self-determination and that the state represents the people and derives its legitimacy from the free votes of the people.
2. Recognition of the principle of separation of powers.
3. Recognition that the legal-judicial system in Iran is a secular system, in which adoption of legislation is the sole prerogative of the Majles. And in that process, the Majles faces no restrictions other than observing the Constitution.
4. The judiciary's independence must be stressed in the Constitution, and all the country's organs, be they state or private institutions. The Supreme Judicial Council should act as the guarantor of the judiciary's independence and its composition must be such that prevents interference by the executive branch in judicial affairs and administration of justice.
5. The articles adopted in the two aforementioned UN General Assembly resolutions concerning the independence of the judiciary must be totally observed in the Iranian judiciary's organization and performance.

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8. Privileges here have been interpreted as "State Ruling".

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