An Appraisal of the Constitutions of the Islamic Republic of Iran: before and after the Khomeini's Revolution

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Abstract

Iran, in its recent modern history, experienced two Constitutions ─ the Constitution 1906 and the Constitution 1979. Though the former, declared the state as a constitutional monarchy, the independent constitutionalists pronounced Iran to be a "state still in the firm grip of theologians, therefore, it has not been able to secularize itself". Whereas the later document, shook almost all political circles opposing the Islamic state saying that Iran, after Khomeini's revolution, has transformed itself into a theocratic state. If Iran, prior to 1979, was in the firm grip of theologians, what change occurred upon the promulgation of the new canon? This interrogation obviously requires a deep study of both the constitutions, so it could be established what type of theocratic institutions was in the former case, and what institutional changes were made by the Constitution 1979 into the bodies available prior to it. Why in 1906, the articulation of the constitutional monarchy divided the state business into ecclesiastical, revenue and ordinary laws? What institutions were there to facilitate the state in this state of dichotomy? These are some of the questions which author addressed in this discourse. The author in this study evaluated the status of religious institutions embodied into the new constitution with an emphasis on the comparison of both the canons. At the end the author, precisely but holistically evaluated if these institutions have an ability to achieve the objectives of the Islamic revolution in the future and if they attract the Muslim *Ummah* as a whole or, if some changes into the constitution are needed for explanation or clarification. At the end, the author made some sold recommendations for future political set up of Iran.

Keywords: Constitutions; Islamic Republic of Iran; Khomeini's Revolution

A Short Constitutional History of Iran:

Upon adoption of the American Constitution by 12 states of the continent in September 1787, a dire need emerged in many other countries to have a written constitution. Some countries, like France, followed the American pattern immediately, others measured it up gradually, and with the passage of time they were able to have their

own canon. Iran, like a number of other sovereign states of the world, was run by the *Shahinshah*, viz., it was without a written constitution, and remained in the latter category until 1906. A change occurred in 1906 when the *Zil-i- subhani* (the shadow of God, the King), on 5 August, 1906 directed the Prime Minister to constitute an Assembly of delegates and issued a *Firman* (decree) in which the basic parameters for establishment of the Assembly were pronounced. The sovereign demanded, "and we do enact that an Assembly of delegates elected by the Princes, the Doctors of Divinity (*'Ulama)*, the Qajar family, the nobles and notables, the landowners, the merchants and the guilds shall be formed and constituted, by election of the classes above mentioned, in the Capital Tehran". Obviously, as the construction of this decree unveils that the assembly, unlike the present one, was not constituted on the basis of an authorization granted by the adult population of the state and, therefore, its mandate was, besides others, limited to "submit (their proposal to us)[the King], so that these having been duly ratified by Us"(1).

Subsequently, in December 1906, upon establishment of the National Assembly, the Shah issued another decree stipulating the principles and articles of the Fundamental law. The composition of the assembly was not in accordance with democratic norms as for the selection of 162 members, according to the Electoral Law of September 1906, neither the people were consulted nor the members were from amongst the general public, but were from amongst categories; the Princes, the Doctors of Divinity (*'Ulama)*, the Qajar family, the nobles and notables, the landowners, the merchants and the guilds .

Officially the decree of December 1906 is claimed to be the constitution of 1906, but constitutionality is reluctant to accept it as the constitution, as primarily it consisted of guidelines, dictated by the monarch, for preparation of the constitution. In pursuance of this decree, the National Assembly passed the Supplementary Constitutional Law ratified by Shah Muhammad Ali, the successor of the originator of this exercise, Muzzafar-ud-Din Shah. In the constitutional history of Iran both the documents ─the decree of December 1906 authored by the Shah and the Supplementary Fundamental Law of October 1907 prepared by the assembly and ratified by the Shah─ are considered as the Constitution of Persia 1906,

in which some specific restrictions and some general royal safeguards can be seen.

As regard the characteristics of the Constitution 1906, the document could not gain the consensus of political scientists as primarily it changed the state system from an autocracy to a consultatative monarchy, though the traditional constitutionalists describe it as a change into constitutional monarchy. Needless to say, it was a transformation, though at very thin level, governed by the principles of separation of powers ─the legislature, the executive and the judiciary. Among the features of this more solid phenomenon at one end, the vulnerability of these three state organs, at the other end, may also be seen, example of which is, but not the only, that both types of courts─ ecclesiastical tribunals connected with the ecclesiastical law, and civil tribunals connected with the ordinary law─(2) were managed and supervised by the Ministry of Justice─(3) a part of the executive.

The Constitution of 1906 engaged the state organs until the forceful removal of the Shah as a result of a public coup in 1979 which led to the introduction of new statute of Islamic Republic of Iran. Unlike the Constitution of 1906, which was an outcome of the monarch's will, the present Constitution of 1979 went though the people's popular votes and more than 98 per cent were in favour of the Islamic Republic (4). It would not be out of place to mention here in passing that Islam, even during the period before the Islamic revolution, remained deep rooted into the masses and at constitutional level as well. The people, in 1979, chose their deputies to the Assembly of Experts─ the body entrusted with the task of compilation of the draft constitution. This body had sufficient mandate of the people to author a constitution for the Republic, but in order to validate the document on a more sound footing, the constitution was referred to the people for seeking their approval, or otherwise, who gave it their overwhelming support.

While one of the objectives of this paper is to conduct a careful examination of both the documents it can be stated, without any reservation, that the Constitution of 1979 was adopted by the Iranian nation, in compliance with democratic norms as compared to its predecessor─ the Constitution of 1906.

Religio-constitutional Institutions of Iran in 20th Century:

Before taking the discourse on the board, it is worth mentioning that whatever system and by whatever way the Iranian nation determines the system of its governance, such system cannot be long lasting unless an indication of Islamic way of life is incorporated into it. To test the validity of this thesis, one may look at both the constitutions of Iran, wherein Islam always remained the religion of the state, the ecclesiastical courts in the former case, enjoyed their powers and in the latter case the state is declared as an Islamic Republic. In the following paragraphs an appraisal of the religio-constitutional institutions of Iran in 20th century is analyzed in the context of its future relevance and viability.

Ecclesiastical Committee of theologians in the Constitution of 1906

Most of the contemporary political scientists and constitutionalists have asserted that Khomeini's revolution switched over the state system from constitutional monarchy to a theocratic state but, contrary to this claim, independent constitutionalists, in the past declared Iran as, "On the whole the State is still in the firm grip of theologians and has not been able to secularize itself ─a great impediment to its progress"(5). If Iran, prior to 1979, was in the firm grip of theologians, what change occurred upon the promulgation of the new canon? This sign of interrogation obviously requires a deep study of both the constitutions in order to determine exactly what type of theocratic institutions were in existence in the former case, and what institutional changes were introduced by the Constitution of 1979 into the bodies available prior to it. Why in 1906 the articulation of the constitutional monarchy divided the state business into ecclesiastical, revenue and ordinary laws (6)? What type of institutions was available to facilitate the nation in this state of dichotomy? These are some of the questions that need to be addressed in this study.

While the Constitution of 1906 had a considerable and elephantine volume of theology embedded in it the theocratic view point was also prominently reflected. However, primarily writers erect their thesis taking the plea of an article of the constitution according to which it was for the learned doctors of the assembly to determine whether any laws proposed are or are not conformable to the principles of Islam. The article provided a committee composed of not less than five *mujtahids* or other devout theologians. Upon the presentment of 20 names of *Ulama* cognizant of the requirement of the age by the *Ulama*

and Proofs of Islam to the National Assembly, the Assembly would, either by unanimous acclamation or by vote, designate five or more of these, according to the exigencies of the time, and shall recognize these as members of the Assembly. This five members' committee, under the power conferred upon it by the same article, was fully empowered to examine and discuss all matters proposed in any such proposal which the committee found against the sacred laws of Islam. In such case, the decision of this Ecclesiastical Committee was final and required to be implemented. The constitution emphasized that this article would continue unchanged until the appearance of His Holiness, the Proof of the Age(7).

The Constitution of 1906 also gave powers of legislation to His Imperial Majesty, the National Assembly, and the Senate, but at another occasion, it strengthened the powers of Ecclesiastical Committee by saying that the introduction of law must not be at variance with the standards of the ecclesiastical law and on the approval by the members of both houses and the Royal ratification. Again it has already been cleared that no bill could have the assent of the house, unless the Ecclesiastical Committee approved it. Therefore, either way the legislative process was dependent on the assent of the committee of five theologians.

Ecclesiastical Courts in the Constitution of 1906:

Like many countries of the world, the Constitution of 1906 segregated the power structure into three conventional spheres —the legislature, the executive and the judicature. But unlike other states, the judicial powers remained exclusively with the ecclesiastical tribunals in matters related with ecclesiastical law, and to the civil tribunals in matters related with ordinary law(8), viz., for the purpose of redressal of public grievances; the court system was divided into categories mentioned as under(9); ecclesiastical courts, civil courts, and military courts to be appointed according to special law(10).

As regards the appointment of judges, the constitution clearly declared that all matters falling within the scope of ecclesiastical law, judgment is vested in just *mujtahids* possessing the necessary qualifications The Ecclesiastical Judge, besides other powers, was conferred upon the power by the constitution to approve, or otherwise, the appointment of the Public Prosecutor(11).

In fact, the ecclesiastical courts' system was introduced, in order to classify the judicial set up according to the religious beliefs of the nation but, subsequently, because of its practical implications, some problems arose at state level between His Britannic Majesty and His Imperial Majesty the Shah of Persia, which indicated that at the international level, the Iranian judicial system was not generally acceptable. On behalf of the British Representative, Mr Pakervan, as an extension to the Anglo-Iranian Treaty of 10th May 1928, wrote Notes regarding the position of British nationals in Persia, in a way that "British nationals will in every case be amenable only to lay (non-religious) tribunals, and lay [ordinary] laws alone be applicable to them".

Not only this, he, on the other hand also recognized the religious sovereignty of Iran over the British nationals of the Muslim religion in a way that "…… it is understood that in matters of personal status, i.e., all questions relating to marriage, conjugal rights, divorce, judicial separation, dower, paternity, affiliation, adoption, capacity, majority, guardianship, trusteeship and interdiction; in matters relating to succession to property, whether by will or on intestacy, and the distribution and winding up of estates; and family law in general, it is agreed between Persia and Great Britain that … As regards British nationals of the Moslem religion, the provision of Moslem religious law, in conformity with the Persian codes, will be applied to them in matters of personal status, until this question has been finally settled.[i]"

But after World War II, when the western nations especially the USA took the Iranian political system in their iron grip, no considerable voice could be noticed against ecclesiastical courts until the revolution.

The Guardian Council in the Constitution of 1979 and its Democratic Status

Some constitutionalists consider the Islamic Consultative Assembly of the republic as a religious institution but, setting aside this view point, the case of Guardian Council is the issue of the time, as the Assembly is in the line of most of other democratic countries of the world parallel to their lower house. But before pushing a pace ahead the discourse, it world be of great value if the Iranian legislative process is elaborated slightly. The Constitution allows the Islamic Consultative Assembly to pass laws in all matters within its jurisdiction,(14) but it

may not enact laws contrary to the constitution or to the doctrines and laws of the country's official religion ─ Islam. The Guardian Council is empowered to ascertain the compatibility of legislation passed by the Assembly with the laws of Islam(15). The constitution provides the Guardian Council to be constituted for six years to safeguard Islamic laws and to verify the compatibility of legislation passed by the Assembly. The Council ─equivalent of the upper house of any democratic country─ is composed of 12 members, out of those, six Islamic jurists (*Fuqaha*), who are persons of integrity (*'adalah*), well aware of the present needs and issues of the day are appointed by the Leader, and six lawyers specializing in various fields of law are elected by the Assembly. The lawyers, from amongst a list of Muslim lawyers nominated by the Head of Judiciary, are elected by the Assembly(16). The constitution demands that all legislation passed by the Assembly must be sent to the Guardian Council and within ten days of its receipt the Council will either declare it as incompatible with the criteria of Islam or it will be considered passed. To ascertain the compatibility of legislation of the Assembly with Islam, it rests with a majority of six *Fuqaha* on the Council.

Before analyzing the futuristic Iran, one complicating and confused factor must be borne in mind that so far as the religious status of the republic is concerned, no substantial changes occurred in the Constitution of 1979 as compared to its predecessor, especially with reference to Occultation and of appointment and influence of theologians. In 1979 when the Iranian nation overthrew the two and a half thousand years old monarchy and established the state system on democratic principles, almost the whole western world was shaken saying that certain provisions of the Constitution of 1979 are curtailing the powers of parliament and, therefore, are against the principles of democracy.

Interestingly, in Afghanistan prior to American and NATO invasion the country was known as the Republic of Afghanistan, whereas it's new constitution, promulgation of which was supervised by the secular forces, surprisingly, declares the country as Islamic republic. It certainly means that the real problem is not the conflict of ideas among the states, but is clash of interests in the region. The Iranian revolutionary forces had thrown out the foreign influence and in consequence to that almost all the western media blamed Iran as a

non democratic state. A role model of this phenomenon can be seen in a book simultaneously published from London and New York, in which the author mentioned the powers of the Assembly, like appointment of the Council of Ministers and approval of accords, contracts, treaties and international agreements, and eventually he arrived at the conclusion that "The owners of the parliament are seriously reduced in the constitution by the right of veto exercised by the Guardian Council"(17).

Democratic Position of the Guardian Council

While making the constitution, unfortunately, the architectural team of the constitutionalists of Iranian revolution, including their technicians, mistakenly named their upper house as Guardian Council and declared their bicameral house as unicameral one, whereas, the factual position is like American constitutional order wherein the upper house— the senate— enjoys almost the same powers which the Guardian Council exercises. The official website of the United States Senate, proudly pronounces that "the Senate has always jealously guarded its powers to review and approve or reject presidential appointees to executive and judicial branch posts," viz. "Ambassadors, public Ministers and Consuls, Judges of the Supreme Court and all other Officers of the United States". Identically, under the American constitution, the Senate is empowered to approve, by a two-thirds vote, treaties made by the executive branch. Why criticism on the Guardian Council? Probably because of its members' appointment which is not at the will of the people at large, but they are nominated by the Leader and the Assembly. Interestingly, the same pattern was in vogue in the US prior to 1913.

No doubt, the American senatorial system now gives powers to the people of each state to elect its senators by direct vote, but prior to 17th constitutional amendment in 1913; the elections were made not by the people, but by the respective state legislatures, similar to Iranian pattern. Upon continuous receipt of information about corruption and bribery, the Congress proposed the amendment into states decretal to this effect and states ratified it. The existence of the Guardian Council in Iranian political system is a result of constitutional provisions approved by the people themselves; therefore, the Council is as democratic as the Senate of America was prior to 1913 and since the nation did not receive any information regarding the corruption and

bribery of the members of the Guardian Council, there is no need to change the political order.

As regards the appointment of the six Islamic jurists *('adil Fuqaha')* by the Supreme Leader, it is largely a matter of ignorance of the intelligentsia at one end, and a matter of disinformation disseminated deliberately by the secular media at the other end of the dialogue. Almost same, or to some extent identical to Iranian constitutional way, the members of the House of Lords ─upper house of British Parliament─ acquire their office either by way of the hereditary principle or they are appointed by the Crown. If the Iranian political order, partly, takes religious element not by way of democratic norms, then on the same pattern, the Archbishops of Canterbury and York and the Bishop of London, Durham and Winchester have the right to a seat without popular vote of the people. Moreover, 21 other seats are also reserved for spiritual (religious) lords, which are taken by diocese ─a district under the pastoral care of a bishop in the Christian Church─ bishops on the basis of seniority from the date of their appointment (18) but not on the principle of popular vote of the people.

Is it not a matter of surprise and astonishment that the whole of the upper house of the mother of democracy ─1130 members and is the largest legislative body in the world─ (19) is composed of either by virtue of hereditary principle or by way of appointment by the Crown, and the people of Britain are, even in this 21st century, are silent? On the other hand, half of the total members of the Guardian Council are elected by the Assembly of the people and remaining half of the members are appointed by the Iranian Supreme Leader who is also elected by the people's representatives. Therefore, in this context the discourse begs the question. Which one of the systems─ British & Iranian─ is near to the democratic principles? It is hoped that someone else would be able to pay attention to this un-attended area of constitutionality of a western role model and an alleged theocratic state.

However, on the other hand, the study also reveals that there is a dire need to enhance the number of members of the Guardian Council, by giving more diversification to its membership and reducing and curtailing its powers up to the level of British House of Lords. It also suggests that, for the purpose of election, instead the Guardian Council, an independent election commission or similar body like other democratic states' institutions is the stark reality of the time so that the

election process at all levels may not be stigmatized by the forces opposing the revolution.

The Leader and the Leadership Council in the Constitution of 1979:

After the demise of *Imam* Khomeini's and during the Occultation of *Walial Asr,* the appointment of the Leader is vested in the Assembly of Experts elected by the people. The Experts of the Assembly review the merits of all qualified jurists who are just, pious, fully aware of the times, courageous, possessing administrative and problem solving skills and abilities([20]). The Leader must have ability to give ruling *(fatwa)* in various fields of Islamic law *(fiqh)*, must have integrity (*'adalah)* and must have a sound political social vision and prudence. In case more such jurists fulfill these qualifications, the Experts shall elect one jurist out of those as Leader, who shall assume the *Wilayat al-amr* and all responsibilities arising from it.

Appointment of the Supreme Leader is vested in the Assembly of Experts provided under the constitution which has full support of the people, but surprisingly the opponents of the revolution criticize the appointment of the Leader hysterically: "the *velayat-faqih* system invests the law, power and legitimacy in one man, the so-called Supreme Leader. The clerical regime is totalitarian, because it does not recognize freedom and the right of political activity for anyone other than those who fit within the narrow definition of "loyal to the Islamic state"[(21)]. In the western world the holocaust denial leads to criminal prosecution in certain European states like Germany, Austria and Romania and as a result of which the denier is criminalized with a maximum prison sentence of one to three years. Obviously it means that this taboo is more respectable to western community than the Ten Commandments of the prophet Moses. The defenders of this Kangaroo closure take the plea of parliamentarian sovereignty, but do not allow the Iranian parliament to exercise the same sovereignty.

The Leader has a lot of functions and full authority over the state organs, out of which, but not exhaustive, are: defining the general policies of the republic; appointment, dismissal and resignation of jurists of the Guardian Council, Head of the Judiciary, Head of the radio and television, Chief of the Joint Staff, Commander-in-Chief of the armed force; dismissal of the President; pardon or reduction of sentences of convicts, etc.

A Critical Appraisal of Iranian Constitutional Order

The majority of western media pronounces Iran, as a state ruled by the clergy and that it has yet to acquire the status of a modern democratic state. But to an independent researcher, it is a matter of surprise that a bitter fruit ripen autocratically ─the Constitution of 1906 and the parliaments before revolution─ remained a savor piece of joy and fun until popular revolution, whereas the outcome of the aspirations and dire needs of the people of Iran ─The Constitution of 1979 and new system of the Republic─ is considered as non-democratic and a bottleneck again and again. For very obvious reasons, which do not fall within the scope of the argument of this article, it is hoped that someone else will independently explore the vulnerability of the western thought and will address their worries within the changing context, however, it would not be out of context to say that the present Constitution of 1979 is a pace ahead of American constitution which does not have popular approval of the masses, but is a document drafted by the representatives of the people, whereas the Iranian constitution has a solid and direct approval of the people .

The people of Iran, having diverse religious beliefs, were fully empowered to maintain a set of rules by which their minds and souls were saturated since 14 centuries and they exercised their powers in 1979 by delegating their sovereignty to their Leader and to the Guardian Council. The people hailing from other systems and other parts of the world, having not a slight degree of knowledge about the beliefs of the people of Iran, are not in a position to make observations regarding the powers of the Leader and of the Council. Where the Council derived these powers from? It would not be out of the way to mention here that even an elementary book of jurisprudence can unclad that among other sources of law, those may give rise to collective will of a nation, are history, language, religion, culture and so on.

Therefore, it is a matter of surprise to an independent constitutionalist that what was the need to claim that "the sovereignty of the Islamic jurists negates sovereignty of the people --- Islamic regulations and principles limit the rights of the people"[(22)], on the other hand the Constitution of 1979 itself pronounces that it was confirmed through a majority of 98.2% of eligible voters in the referendum[(23)]. This pronouncement of the constitution was

witnessed by international media independently. This is a matter for another independent and serious research, as it does not fall within the scope of the present debate, as to how many constitutional documents in the history of mankind, were filtered through the referendum. However, the audience of this paper are reminded that the constitutions of major countries of the world ─even the American constitution─ were not adopted through the process of referenda but were taken on political board of the country through the representatives of the people, whereas the Iranian legislators did not take this responsibility, but diverted it towards the source of their power─ the people.

Constitutional Future of Iran

The majority of the Islamic Republic of Iran consists of Shi ia sect of Islam which believes in the Occultation of *Imam*–a dogma which is extremely deeply rooted into hearts and souls of this community since its inception centuries ago. Whatever the constitutional efforts, in both the cases–before and after Khomeini's revolution– in brief, the outcome is an interconnected flow of popular will of the nation; the representatives of the people prepared a constitutional document–a complete canon– but they referred it to the Iranian people seeking their sanction through a referendum. On the other hand, the material coming from secular circles, specifically, unveils the frustration of those who do not surrender their will before extraterrestrial source of knowledge. Some of them put forward their indoctrination, even to some extent, non-academically. The best example of which can be seen at the very first sentence of introductory note of Asghar Shiraz's valuable book, *the Constitution of Iran, Politics and State in the Islamic Republic"* which claims, "The Constitution of the Islamic Republic of Iran is full of contradictions…[(24)]" Had this phraseology been at the end of the book viz., as a result of the author's conclusion, it would definitely be an attractive source for the reader but in its present form it is a piece of frustration.

Epilogue

Kalim Siddiqui, however, has very rightly, dug out the roots of constitutional development of Iran. He writes:

> In their [*Shi'ia*] particular belief in the absence of the Imam all authority is illegitimate by definition. And this led the *Shi'ia Ulama* to insist on the constitutional reforms that were known as the Constitutional Revolution in the early part of the century (1906-11). The basic attempt was not to legitimize the system but to minimize the degree of illegitimacy of the political system. Legitimacy being impossible in the absence of the twelfth Imam, the attempt was the constitutional means of keeping the degree of illegitimacy within acceptable limits. This was the situation in *Shi'ia* political thought(25).

Therefore, whoever would like to look at the Iranian political system, what it could be, must bear in mind that the *Shia* community, unlike *Sunni* Islam, would definitely graft and transplant its religious dogmas to its complete state hierarchy as well. This is, in short, very obvious to serious scholars that the Constitution of 1906 had provided for a five members' Ecclesiastical Committee of the Assembly, a board of *Ulema,* to review legislation to ensure its conformity to the holy law, but this clause of the constitution was never implemented in reality(26). The question is particularly baffling as to what was the need to transplant such an element which never had taken its strength from any aspect of the political system? Indeed, its answer is obvious, as Mr. Siddiqui elaborated that the attempt was not made to legitimize the system but to minimize the degree of illegitimacy of the then political system, therefore, in the very near future, or decades ahead of us, or in the era of our off-spring, whenever the Iranian nation adopts any constitutional changes for the modification of its political system, one shall definitely observe that the exercise will carry an holistic religio-political approach evolving around the absence of the Twelfth Imam –the Occultation.

The principles, a nation adopts for its future is two fold, and as earlier mentioned that all the sources of law evolve around the will of the people. What are the elements of will? The approaches and definitions described by the jurists in their work may assist us in the development of definition of will. For example to the people of other nations, the legislation to protect the dogma of holocaust may not be more than a tale to ridicule the political system of a nation

free from Jewish influence. But is it really so? Certain western nations, indeed, have made the concept of holocaust as a part of their book of law in a way that the Son of Man---Jesus Christ--- has, in this context, less respect than the legislation on the holocaust. The question still alive; is it really so? The Jewish community being very sensitive to the debate ─to them it is not even a debate─ demanded from other communities, to embrace the dogma of holocaust holistically, whereas to the people of other nations it is not even a topic to be considered. But since the punishment for holocaust denial is an outcome of the aspirations of the people of those countries, therefore, they have full rights to do whatever they want. Identical to this principle, the Iranian people should be respected if they assign their powers to their Supreme Leader and to the Guardian Council for the implementation of their dogmas at state level.

Conclusion

The present Iranian constitution, however, defines the Islamic republic as a system based on belief in some basic principles elaborated in the Constitution of 1979, in six points, but it does not maintain any territorial boundaries of the republic, which lucidly means and easily understandable that wherever these principles are adopted that would be the Islamic republic. To some extent, these principles may attract the *Sunni* intelligentsia but, *prima facie* and, contrary to the definition of the republic, the constitution impedes the unity of Muslim *Ummah* declaring the state official *madhhab* (school of law) as the Twelve *Ja'fari'* school, Whereas in global context, it can easily be observed that the whole Muslim *Ummah,* by going through the *Fiqhi* differences of opinion, is embracing a new *Fiqhi* school, may be named as "Cosmopolitan *Fiqh*".

Recommendations

Setting aside the *Shia* religious dogmas, *Sunn*i school of law may accept certain *Shia* interpretations of Quran and *Sunnah* and on the basis of principles of reciprocity, it is hoped that the other party of the discourse shall also consider the same phenomenon. In its present form, a considerable part of Iranian inhabitants---*the Sunni*--- feel themselves uneasy with the present constitutional provisions, especially with the Article 12 of the present Constitution of the Islamic Republic of Iran. No doubt the present Constitution of the

Republic is an outcome of the aspirations of the people of Iran, but at the same it is also self evident that dogmas of a particular part of the population are not the case of the constitutionality. The constitutions of the modern states address the issues of state interest which deals with the individual as well as collective life the people of the country. But in Iranian case the parliament of country un-necessarily tinkered the constitutional provisions with their inner beliefs which is the glow of the aspirations of a part of the population, but at the same time another part of the population feel them a stranger in the system.

Therefore, in the light of this study the author of this discourse recommends that the *Shia* Iranian constitutionalists, political scientists and parliamentarians may, by protecting their set of beliefs, make article 12 of the constitution more acceptable to the schools of thought other than the Twelve *Ja'fari'* school. As a result of this recommended and prospective change the coherence and peace among the various sects of the country will definitely enhance, which may eventually prove it as a corner stone of the integration of the Iranian nation--- an integral part of the Muslim *Ummah*.

Reference

[1] Professor Ramesh Chandra Ghosh, The Constitutional Documents of the Major Islamic States, (Lahore (India): Mohammad Ashraf, Kashmiri Bazar, 1947), p. 236-237.

[2] [2]Ghosh, p.225, ibid, article 27 of The Supplementary Fundamental Law of the Iranian Constitution.

[3] Article 71 ibid.

[4] Alhoda Publishers And Distrbutors,P O Box 14155-4363, the Constitution of the Islamic Republic of Iran 1979, article 1.

[5] M.B. Ahmad, Select Constitutions of the World, vol. I, (Karachi: the Manager Governor General's Press and Publications, 1951), p.63.

[6] Ghosh, ibid, p.225, the Supplementary Fundamental Law of Iran 1907,Article 27

[7] ibid, p.222, article 2, the Supplementary Fundamental Law of Iran 1907.

[8] Article 27 ibid.

[9] Article 71, ibid.

[10] Article 87, ibid.

[11] Article 83, ibid.

[i] Ghosh, p.243-5 , ibid

[14] The Constitution of the Islamic Republic of Iran 1979, article 71, ibid.

[15] Article 72 & 96, ibid.

[16] Article 91 & 92, ibid.

[17] Asghar Schirazi, The Constitution of Iran Politics and the State in the Islamic Republic, Translated by John O'Kane (London, New York: I.B. Touris Publishers, 1997) p.15.

[18] E.C.S. Wade and G. Phillips, Constitutional and Administrative Law, (Suffolk: English Language Book Society and Longman Group Limited, 1977), p.136-9.

[19] John Alder, Constitutional and Administrative Law, (London: Macmillan Press Limited, 1994) p.143.

[20] Article 5 ibid.

[21] Mohammad Mohaddessin, Enemies of the Ayatollahs (London, New York: Zed Books, 2004) , p.71.

[22] Schirazi, , p.19, ibid.

[23] The Constitution of the Islamic Republic of Iran 1979, article 1 ibid .

[24] Schirazi , p.1, ibid

[25] Kalim Siddiqui, The Islamic Revolution: Achievements,Obstacles and Goals,(London : The Open Press Limited in association with the Muslim Institute, 1980), p.15.

[26] Richard W.Cottam, Iran and the United States,(Pittsburgh : University of Pittsburg Press, 1988), p.200.