

# A BRIEF SURVEY OF THE HISTORY OF IRANIAN JURISPRUDENCE AND THE EVOLUTION OF IRAN'S LEGAL SYSTEM

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## INTRODUCTION

The following paper will provide a condensed, yet comprehensive overview of the Iranian legal system from the 19<sup>th</sup> century up to the present day. Its focus will be on both the history of Iranian jurisprudence as well as the evolution of Iran's legal system. We will examine three specific periods in order to illustrate how the legal system has evolved. These periods include: the Qajar period during the 19<sup>th</sup> century, prior to the Constitutional Revolution of 1906; the period following the Constitutional Revolution of 1906 and the establishment of the Pahlavi Dynasty; and finally, the period following the Islamic Revolution of 1979 up to the 21<sup>st</sup> century.

As a whole, Iran's legal system and the rule of law has had nothing short of a precarious existence. At the whim of clerics and monarchs, prime ministers and revolutionaries, it has been demolished and rebuilt; stacked, knocked down, and restacked in a way not at all dissimilar to the fate of toy building blocks. The law has served as a key battleground for the secular and the holy, an institution to be conquered, shaped by the contentious push and pull between religion and modernization. Lacking any uniformly codified laws, legal procedures were informed and guided by tradition<sup>1</sup>. The calls for reform which began gingerly in the 19<sup>th</sup> century were, by the beginning of the 20<sup>th</sup> century, earnestly demanded within the political realm and viewed as a necessity for the nation<sup>2</sup>. However, disassembling thousands of years of tradition soon set the stage for conflict. The fierce opposition from groups set to be disenfranchised by modern reforms (especially the religious class) rendered the reformation of the legal system an ambitious project. Reforms were gradual yet promising, often painstakingly acquired. By the time Mohammad Reza Shah presided as monarch over the nation, a secular and cohesive legal system guided by the rule of law was foreseeable on the horizon. However, virtually all the advancements within Iran's legal system which had come to fruition were disrupted in the wake of the 1979 Islamic Revolution<sup>3</sup>. With the nation's transformation into a theocracy, the legal system was, once again, entirely overhauled. The victory of the religious sect translated into a legal system based entirely on Shi'i Sharia law. Since then, the rule of law has become questionable, as it is through manipulation of the current legal system that the Iranian Government has maintained strict control of citizens<sup>4</sup>. While it seems unlikely at present that the Iranian legal system will undergo any further drastic reforms, its heritage as an institution has been driven by a lingering call for progress. Thus, it seems the more appropriate question is when it might again move towards the goal of being an institution rooted in the fair application of laws. Time itself will tell.

#### I. THE QAJAR PERIOD: THE IRANIAN LEGAL SYSTEM IN THE 19<sup>TH</sup> CENTURY

The legal system during the Qajar Dynasty in 19<sup>th</sup> century Iran can be best described as a system of legal pluralism, with the involvement of a wide variety of individuals acting separately to administer justice.<sup>5</sup> These individuals included local elders and tribal leaders, landowners, clerics, and state officials as well as the king or *Shah*.<sup>6</sup> While Iran at this time lacked any written or cod-

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1. HADI ENAYAT, *LAW, STATE, AND SOCIETY IN MODERN IRAN*, 1 (2013).

2. *Id.*

3. Hadi Ghaemi, *The Islamic Judiciary*, THE IRAN PRIMER (Aug. 2015), <https://iranprimer.usip.org/resource/islamic-judiciary>.

4. *Id.*

5. ENAYAT, *supra* note 1, at 29.

6. *Id.*

ified laws, its legal system nonetheless operated quite efficiently, informed by centuries of tradition.<sup>7</sup> However, inconsistencies in rulings and procedures were problematic, as was the overall lack of more clearly defined and organized jurisdictions.<sup>8</sup> The period saw several attempts to reform the legal system; however, the few changes which were implemented were not long-lasting.<sup>9</sup>

#### A. The Qajar Dynasty

Originating from a Turkish tribe, the Qajar dynasty was established in the mid-1700s following the collapse of the Safavid Empire, Iran's previous dynasty which had been in power for a little over two centuries.<sup>10</sup> In order to maintain its hold on the kingdom, the Qajar monarchy implemented a series of appointed prince-governors who acted as an extension of (and answered to) the reigning *Shah*.<sup>11</sup> These individuals in turn engaged with other local leaders including tribal heads and religious clerics, which served to legitimize the power of these other groups while simultaneously enabling the monarchy to have a presence within every province.<sup>12</sup> While formally there were no checks on the *Shah*'s power, the Iranian-Islamic concept of "the circle of justice" served as an informal, albeit light check on the Qajar monarchs.<sup>13</sup> At its essence, the circle of justice emphasized that the main priority of any ruler was justice, which was achieved by maintaining equilibrium between the various social groups, a detail which helps to explain the extent to which religious clerics were able to exert their influence within the legal realm (discussed more in the following section).<sup>14</sup>

During the Qajar period, the *Shah* was directly involved in the administration of justice, presiding over the legal systems deemed secular and theoretically separate from the religious courts.<sup>15</sup> Acting as the head of the secular 'orf court (discussed in more detail in the next section) the *Shah* would personally issue death sentences in cases of intentional murder with eyewitnesses, and would also issue a fair share of judgments in cases involving rape, murder, assault, and theft (referred to collectively as "The Four Crimes," or *ahdath-e arba' a*) as well as cases dealing with issues of abuses of power by government officials, security, or public order.<sup>16</sup> Additionally, the *Shah* presided over a court of complaint known as a *mazalem* court, which was held weekly in the palace courtyard.<sup>17</sup> A

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7. *Id.*

8. *Id.* at 30.

9. *Id.* at 39.

10. *Id.* at 24.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 33.

16. *Id.*

17. *Id.* at 42.

remnant of prior Iranian dynasties, these courts enabled subjects to present personal grievances directly to the *Shah* for guidance as well as immediate rulings.<sup>18</sup>

#### B. The Role of Shi'i Islam in Iranian Society

In 19<sup>th</sup> century Iran, religion and the state existed as separate institutions which operated parallel to one another.<sup>19</sup> More specifically, the Qajar monarchs existed alongside an autonomous Shi'i hierocracy which considered all political authority exercised by actors other than their Imams to be illegitimate.<sup>20</sup>

The emergence of this structurally independent Shi'i hierocracy was the result of jurisprudential divisions within the "Twelver Shi'ism" sect of Islam which occurred as a response to the disappearance of the 12<sup>th</sup> Imam in 837 CE.<sup>21</sup> Upon the 12<sup>th</sup> Imam's disappearance, a majority of Shi'i scholars asserted that, in his absence, it was perfectly acceptable for them to administer their own interpretations of both spiritual writings and teachings as well as the law itself.<sup>22</sup> However, other scholars felt that this independent interpretation—a practice referred to as *ejtehad*—was altogether inappropriate on the grounds that such interpretations yielded knowledge that was merely probable rather than infallible.<sup>23</sup> As such, two conflicting schools soon emerged: the *Akhbaris* who opposed independent interpretation of holy teachings and laws, and the *Osulis* who endorsed independent interpretation by stressing that the Imam's absence required the guidance of a *mojtahed* (scholars qualified to interpret the law).<sup>24</sup> By the 18<sup>th</sup> century, the *Osulis* had come to dominate the Shi'i sect within Iran and subsequently established a scholarly hierarchy in order to interpret legal matters within the context of Sharia law.<sup>25</sup> This hierarchy began with ordinary *mullahs* who provided general counseling, and ended with a supreme jurist, known as the *marja'e taqlid*.<sup>26</sup> More generally, those occupying the most esteemed positions aside from the supreme jurists were the *mojtahed* jurists, those who possessed the authority to provide their independent interpretations of legal matters pertaining to Islamic law.<sup>27</sup> As a whole, by the 19<sup>th</sup> century these clerics had come to possess great authority within Iranian society, regularly providing legal services to the masses.<sup>28</sup>

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18. *Id.*

19. *Id.* at 25.

20. *Id.*

21. *Id.* at 26.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 27.

26. *Id.* at 26.

27. *Id.*

28. *Id.*

As the *Osuli* school of jurisprudence continued to gain prominence, *mojtahed* jurists came to preside within their own religious courts (known as *shar* courts—discussed more in the next section).<sup>29</sup> These religious courts became such a facet of Iranian society that people seeking legal services had a wide variety of locations to choose from and could also select specific *mojtaheds* to preside over their case if they so desired.<sup>30</sup> In the event that parties involved within the dispute were unable to reach an agreement over which *mojtahed* should be selected to preside over the case, either the local governor was consulted to make a selection or the *mojtahed* would be chosen by drawing lots.<sup>31</sup> Such circumstances required the parties to sign an agreement promising to honor the *mojtahed*'s ruling should one or both parties disagree with the outcome.<sup>32</sup> In addressing specific legal problems, the *mojtahed* jurists often drew not only from explanations of law provided within the Qur'an, but also local custom as well as various governmental rulings and royal decrees.<sup>33</sup> However, because the interpretations of the *mojtahed* jurists were deemed to exist independently of one another and given equal authority, differing and contradictory rulings issued by *mojtaheds* over a specific legal question were permitted, leading to a pervasive lack of consensus.<sup>34</sup> Known as *nasekh va mansukh*, this practice enabled flexibility in terms of reaching decisions, but also often led to legal disputes lasting several years as the issue was considered by multiple judges as well as other authorities.<sup>35</sup>

### C. Shar and 'Orf Courts

A dual legal system existed within Qajar Iran, comprised of religious *shar* courts and secular '*orf* courts.<sup>36</sup> It should be noted, however, that “the institutional division between these two legal authorities did not mean that completely different types of law were used in them [as] the distinction between *shar* and '*orf* referred more to jurisdictions and their respective executive authorities than to laws.”<sup>37</sup> Oftentimes, a conglomeration of religious as well as customary law was employed in both.<sup>38</sup>

Religious *shar* courts dealt primarily with civil law issues including inheritance, certain types of commercial contracts, the transfer of property, marriage,

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29. *Id.* at 31.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 28.

34. *Id.* at 31.

35. *Id.*

36. *Id.* at 30.

37. *Id.*

38. *Id.*

divorce, and power of attorney.<sup>39</sup> These courts were present in virtually every main city.<sup>40</sup> Despite it being comprised of a hierarchy of *mojtaheds* as well as various *qazis*, minor judges, the *shar* court lacked any formal organization.<sup>41</sup> Typically, a single judge presided over hearings.<sup>42</sup> However, lesser clerics and court apprentices (*mahkameh shagerd*) might also be present depending on court size or prestige.<sup>43</sup> With the *shar* courts operating in the fashion of the inquisitorial system, the judge personally conducted interrogations and cross-examined the parties involved in a given dispute.<sup>44</sup> Lawyers were virtually non-existent; however, especially wealthy parties had the option of employing representatives known as *vakils* to plead the case on their behalf.<sup>45</sup> The *vakil* differed significantly from a lawyer in that he was employed solely for his persuasive abilities rather than knowledge of the law.<sup>46</sup> Favoring testimony over documentary evidence, *shar* courts also often commissioned agents known as *odul*, or professional witnesses, who were selected on the basis of their morality and personal integrity to testify or certify documents in a given matter.<sup>47</sup> When not presiding over the aforementioned disputes in court, judges also acted as notaries for contracts and other legal documents, endorsing the final document with a seal along with verifying remarks attesting to its legal validity.<sup>48</sup>

While appeals against a *shar* court ruling were not technically permitted within broader sharia law, Shi'i legal theory made allowances for disputed rulings on the basis that "during the absence of the 12<sup>th</sup> imam there could be no consensus [thus] all legal inferences were provisional and [hence] accepting of two contradictory norms."<sup>49</sup> Furthermore, judges lacked any power of enforcement, placing the responsibility of upholding a ruling when a party refused to accept it on secular authorities, including governors as well as other officials under the *mojtahed's* command.<sup>50</sup>

Secular '*orf* courts dealt mainly with issues in criminal law including murder, assault, theft, and rape (previously mentioned as the "four crimes" or *ahdath-e arba 'a*) as well as rebellions, treason, and military uprisings and public order.<sup>51</sup> Like the religious *shar* courts, '*orf* courts also lacked any cod-

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39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 31.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 32.

51. *Id.* at 33.

ified laws.<sup>52</sup> Therefore, it was at the discretion of the *'orf* judges that verdicts and punishments were reached.<sup>53</sup> The majority of decisions here were arbitrarily made and arrived at without set procedures.<sup>54</sup> Furthermore, once a verdict was issued, there was no opportunity for further appeal or arbitration.<sup>55</sup> Especially serious crimes were often allocated to provincial governors and their subordinates as well as other influential local figures including tribal leaders.<sup>56</sup> These individuals often set about executing the requisite punishment in exchange for fines which they received as a portion of their income.<sup>57</sup> Confessions (which occasionally resulted from the accused being tortured) as well as documentary evidence were permitted by *'orf* authorities.<sup>58</sup> However, litigants were referred to a Sharia court in the event that the taking of an oath was necessary.<sup>59</sup>

As alluded to earlier, the highest authority of the *'orf* courts was the Shah.<sup>60</sup> The Shah presided over the *mazalem* tribunals which dealt additionally with abuses committed by government officials and also personally prosecuted cases involving one of the "four crimes." As mentioned previously, in the case of a murder which was found to have been intentionally committed in front of eyewitnesses, the Shah personally issued a death sentence.<sup>61</sup> However, if a murder had been committed without witnesses, the Shah would direct the deceased's relatives to petition a *shar* court for a civil ruling, all the while ordering the governor to keep the suspect in local custody until the case was settled.<sup>62</sup> If the suspect was found guilty, the Shah issued the death sentence which would be carried out by either the local governor's executioners or the deceased's relatives.<sup>63</sup>

#### D. Attempts to Reform the Legal System

Several attempts to reform the legal system occurred during the mid to late 19<sup>th</sup> century. These reforms resulted from the efforts of several notable government officials, including prime minister Amir Kabir and minister of justice Mirza Hosayn Khan Moshir al-Dawleh, as well as advisory councils appointed by the Shah.<sup>64</sup> The main motivation behind these reforms was curbing the judicial power of local governors in order to reduce the abuses occurring primarily

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52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 34.

63. *Id.*

64. *Id.* at 39.

within 'orf courts.<sup>65</sup> However, in each instance, the reforms were short lived, often due to mounting criticism from local leaders who felt that these implementations encroached on their authority.<sup>66</sup>

The first significant attempt to reform the judicial system was spearheaded by prime minister Amir Kabir.<sup>67</sup> An adept statesman, Kabir recognized the need for a uniform judiciary and set about expanding central courts, known as *divan*, which served as an establishment housing rudimentary judicial authority.<sup>68</sup> Renaming this institution The High Court of the Sovereign, or *Divan-e Bozorg-e Padeshahi*, these courts were established within the provinces and served the purpose of operating as a more authentic extension of the Shah's 'orf courts.<sup>69</sup> With this implementation, Kabir also prohibited local governors from torturing suspects in criminal cases.<sup>70</sup>

In addition to Kabir's expansion of central courts, he moved to further reinforce consistency within court proceedings by allocating precedence to a single court operating within the capital.<sup>71</sup> Acting as a kind of supreme court, this institution was presided over by a single leading judge who reviewed cases which had been referred from Sharia courts.<sup>72</sup> The rulings issued by this judge were considered final and binding.<sup>73</sup> Kabir also attempted to address issues of corruption occurring within the religious *shar* courts.<sup>74</sup> However, the implementation of these reforms led to mounting animosity from groups affected by Kabir's agenda.<sup>75</sup> Fearful of uprisings, the Shah responded by executing Kabir after his two years of service as prime minister.<sup>76</sup> Upon Kabir's demise, his reforms were abolished.<sup>77</sup>

The second wave of reforms were ushered in following the British defeat of the Iranian army during the Second Afghan War in 1857.<sup>78</sup> In the battle's wake, the Shah grew increasingly interested in the expertise of a group of senior governmental officials who had studied the workings of Western governments.<sup>79</sup> Their observations led the Shah to replace the position of prime minister with

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 41.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

a council of six ministers.<sup>80</sup> These ministers were directly responsible to the Shah and dealt with a diverse range of administrative matters.<sup>81</sup> Among these ministers was a minister of justice, known as the *vazir-e 'adlieh*.<sup>82</sup> From this council came Iran's first procedural code in 1858.<sup>83</sup> Titled the *Dastur al-Amal-e Divankhaneh-ye Adlieh-ye Azam*, or the Procedural Instructions of the Grand Justice Ministry, this document provided guidelines for the appointment of officials set to preside over the central courts.<sup>84</sup> The document went on to outline the subsequent duties of these officials, known as *divanbegi*.<sup>85</sup> More administrative than judicial, the *divanbegi* were tasked with the supervision of both the *shar* and *'orf* courts.<sup>86</sup> Their responsibilities included recording cases brought before the courts as well as providing regular feedback regarding the ways in which cases were treated and resolved.<sup>87</sup> They were to scrutinize the manner in which local governors interacted with the *'orf* courts to ensure that the newly conceived procedural rules were in fact being observed.<sup>88</sup> However, less than two years after the 1858 decree was implemented, it was abruptly suspended at the urging of numerous local governors who insisted the new policies would result in disorder.<sup>89</sup>

The final set of attempted reforms came from the efforts of Mirza Hosayn Khan Moshir al-Dawleh (more commonly referred to as Sepahsalar), who was appointed as the minister of justice in 1870.<sup>90</sup> Upon taking office, Sepahsalar immediately set about creating an agenda including sweeping reforms of Iran's judiciary.<sup>91</sup> One crucial reform was the establishment of four distinct courts within the Ministry of Justice.<sup>92</sup> Known as *majles*, these courts each presided over specific issues, including the adjudication of criminal cases, the drafting of laws, the enforcement of judgements, and the investigation of petitions.<sup>93</sup> Two additional courts were later added which oversaw property disputes as well as commercial issues.<sup>94</sup> Further decrees issued by Sepahsalar brought about the development of uniform judiciaries within the provinces.<sup>95</sup> These local judicia-

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80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* at 41.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

ries, known as *'adalatkhaneh*, were presided over by a head official (the *amin-e 'adlieh*) who abided by set procedures to ensure that the legal process was fair and that people's rights were safeguarded.<sup>96</sup> For example, individual due process rights were recognized with the requirement that arrests and summons could only be carried out with a court order.<sup>97</sup> Additionally, with the exception of cases involving murder and theft, pending trial, suspects were to be released on bail.<sup>98</sup> Procedural rules were also implemented to govern the obtaining of evidence as well as the written recording of judicial proceedings.<sup>99</sup> In order to ensure that parties felt some sense of autonomy in the legal process, Sepahsalar kept the customary practice allowing individuals involved in civil disputes (known as *hoquqi*) to select the court (either *shar* or *'orf*) to hear their case.<sup>100</sup> Once again however, these reforms, along with other political decisions, caused widespread resentment among local governors, clerics, and numerous other authorities and actors.<sup>101</sup> With Sepahsalar's subsequent downfall came the demise of his countless amendments.<sup>102</sup>

By the 20<sup>th</sup> century, Iran's legal system on the eve of the Constitutional Revolution of 1906 contained only a central court which was located in the capital and was comprised of several courts, including a court of complaint (*mazalem* court), a court of investigations (*divan-e tahqiq*), as well as a commercial court (*divan-e tejarat*).<sup>103</sup> With the exception of a penal code utilized by the European-Tehran police, authored by an Austrian commander, no codified law existed.<sup>104</sup>

## II. THE CONSTITUTIONAL REVOLUTION AND THE PAHLAVI PERIOD: IRAN'S LEGAL SYSTEM IN THE 20TH CENTURY

With the 20<sup>th</sup> century came many significant changes for Iran. Most notably, the turn of the century ushered in an era of increasing secularization throughout the region.<sup>105</sup> In Iran, this came in the form of mounting calls for a complete overhaul of the nation's government and, by extension, its legal system.<sup>106</sup> These domestic calls for governmental reform, coupled with an increased Western presence in the nation and the ensuing regime of capitulations, culminated in the

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96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 42.

102. *Id.*

103. *Id.*

104. *Id.*

105. Naser Entessar, *Criminal Law and the Legal System in Revolutionary Iran*, 8 Bos. COLL. THIRD WORLD L.J. 91, 93 (Jan. 1, 1988).

106. *Id.*

Constitutional Revolution of 1906.<sup>107</sup> As indicated in the event's name, the Constitutional Revolution brought about creation of Iran's first constitution as well as a bill of rights.<sup>108</sup> The adoption of this constitution was accompanied by a working agenda to centralize the legal system.<sup>109</sup> However, as the 20<sup>th</sup> century unfolded, such changes within Iran were shaped to a great extent by a larger struggle between the religious class and rising secular forces.<sup>110</sup> Because religion had been so deeply entrenched in Iranian society, loosening its hold on the legal system was, at first, gradual. While several important developments occurred, such as the formation of the Iranian Bar Association in 1915<sup>111</sup>, it was not until Reza Shah assumed power with the establishment of the Pahlavi Dynasty in 1925 that reforms within the legal system were expedited, becoming widespread and sweeping.<sup>112</sup> Even more reforms ensued during the reign of Mohammad Reza Shah Pahlavi, son of Reza Shah. Inheriting the ambitions of his father in terms of transforming Iran into a modern nation, Mohammad Reza Shah continued the process of updating the legal system. During his tenure as king, a refined court system coalesced, each with specific jurisdictions and accompanying procedural guidelines.<sup>113</sup> Even in remote rural provinces where legal reforms often struggled to take hold, specific courts designed to meet the needs of the village population were implemented.<sup>114</sup> Though young, the prospect of a mature system guided by the rule of law developing over time seemed promising. However, with the 1979 Islamic Revolution and the subsequent ousting of the shah, decades of legal reforms departed with him.<sup>115</sup>

#### A. The Constitutional Revolution

The beginning of the 20<sup>th</sup> century brought about a gradual weakening of the Qajar monarchy. Yet along with a fading monarchy, Iran also saw itself becoming the focus of European imperialist powers.<sup>116</sup> While these powers set about attempting to secure their own interests within the nation, the increasing Western presence was soon felt in Iran's disjointed legal system.<sup>117</sup> European powers quickly noted that there were no uniform legal procedures or set codified laws,

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107. ROY MOTTAHEDEH, *THE MANTLE OF THE PROPHET: RELIGION AND POLITICS IN IRAN* 208 (1985).

108. Entessar, *supra* note 105, at 93.

109. *Id.*

110. *Id.*

111. Reza Banakar & Keyvan Ziaee, *The Life of the Law in the Islamic Republic of Iran*, in 51 *IRANIAN STUDIES* 716, 720 (June 26, 2018).

112. Entessar, *supra* note 105, at 93.

113. *Id.*

114. Gordon B. Baldwin, *The Legal System of Iran*, in 7 *THE INTERNATIONAL LAWYER* 492, 498 (1973).

115. Ghaemi, *supra* note 3.

116. MOTTAHEDEH, *supra* note 107, at 208.

117. *Id.*

making it was unclear how foreigners were to be judged.<sup>118</sup> European powers thus sought to protect their own citizens by insisting that, in the event a European found themselves on trial within Iran, a representative of that individual's home nation must be present to oversee the proceedings.<sup>119</sup> If the European representative agreed with the Iranian court's ruling, they would provide their signature upon the court's decision.<sup>120</sup> However, if the representative did not agree with the ruling, the absence of their signature acted as a sort of legal veto, rendering the court's decision null and void.<sup>121</sup> Known more generally as "regimes of capitulations," these maneuvers by European powers exposed the weaknesses in Iran's legal system with its lack of any fixed written law.<sup>122</sup> This prompted a growing number of Iran's political actors to view the establishment of codified laws as vital for the overall legitimacy of the nation in the face of foreign interference.<sup>123</sup>

Widespread opposition to these capitulations and desires for the creation of a modern and competitive government resulted in the Constitutional Revolution of 1906. Inspired by Belgian as well as French governmental models, the ensuing constitution drafted by the Iranians separated the government into three familiar branches—the executive, legislative, and judiciary. It would undergo several subsequent revisions in 1907, 1925, 1949, and 1967.<sup>124</sup>

Serving as a blueprint for a constitutional monarchy, the constitution enabled the Shah to act as head of the executive branch.<sup>125</sup> The Shah had the authority to appoint ministers as well as governors for the 18 provinces.<sup>126</sup> The Shah could also act as commander-in-chief of the Iranian military, declaring war as well as peace.<sup>127</sup> However, appointed ministers and governors were responsible not to the Shah, but to the Iranian parliament, which also scrutinized the Shah's proposals and policies.<sup>128</sup>

Likewise, the constitution divided the legislature between the Shah, a senate, and a "National Consultative Assembly," known as the *Majlis*.<sup>129</sup> Each body had the authority to introduce proposals.<sup>130</sup> However, the constitution stipulated that any prospective laws were effective upon approval of both the *Majlis* and Senate, at which point they also required the signature of the Shah.<sup>131</sup> The

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118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. Baldwin, *supra* note 114, at 494.

124. *Id.* at 495.

125. *Id.*

126. *Id.* at 496.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

Majlis comprised the Iranian parliament and were either elected or nominated by various political parties.<sup>132</sup> In a similar vein, the Iranian senate was made up of 60 members, half of which were elected by the people and the other half appointed by the Shah.<sup>133</sup>

Initially, the judiciary under this newly-drafted constitution was comprised of a two-tiered court system which retained the religious courts, allowing them to continue existing alongside secular ones.<sup>134</sup> Consequently, Shi'i clerics were permitted to maintain control over issues pertaining to family law (including marriage, divorce, and succession).<sup>135</sup> Additionally, for the most part, the clerics continued to exercise de facto jurisdiction within numerous areas of civil law—especially in rural areas.<sup>136</sup> Nevertheless, the secular courts underwent several meaningful changes, the most significant being the implementation of a codified legal system including the Iranian Civil Code, which was a conglomeration of the French civil and commercial codes.<sup>137</sup> Still other crucial developments occurred gradually following the constitution's adoption.<sup>138</sup> In 1910, the office of the Central Public Prosecutor was established, followed by the reorganization of the Ministry of Justice a year later.<sup>139</sup> As mentioned previously, the creation of the Iranian Bar Association in 1915 also served as a fundamental step towards the cultivation of a modern legal system.<sup>140</sup>

## B. The Pahlavi Dynasty

In 1925, Reza Pahlavi, former commander of the Iranian Army, Minister of War, and Prime Minister, was selected by the Iranian Parliament or *Majlis*, to be the nation's next monarch.<sup>141</sup> Effectively ending the Qajar Dynasty, the *Majlis* also went on to reform the constitution, enabling him to be formally recognized as the Shah of Iran.<sup>142</sup>

From the instant he assumed power, Reza Shah was set on modernizing the nation.<sup>143</sup> Tied inextricably to his plans for a modern Iran was the secularization of all major government institutions—especially the legal realm.<sup>144</sup> Straightaway he began the process of reforming the legal system. Only a year after beginning his reign, the Shah's newly appointed Minister of Judicial Affairs, Ali-Akbar

132. *Id.*

133. *Id.*

134. Entessar, *supra* note 105, at 93.

135. *Id.*

136. *Id.*

137. Baldwin, *supra* note 114, at 494.

138. Entessar, *supra* note 105, at 93.

139. *Id.*

140. Banakar & Ziaee, *supra* note 111, at 720.

141. Baldwin, *supra* note 114, at 495.

142. *Id.*

143. Entessar, *supra* note 105, at 93.

144. *Id.*

Davar, disbanded Iran's entire judiciary with the permission of Parliament.<sup>145</sup> The following year, 600 judges were appointed, all trained in exclusively secular law.<sup>146</sup> Wide-ranging secular laws were subsequently implemented, openly defying the Shi'i clerics who were very much unwilling to relinquish their status as legal authorities.<sup>147</sup> Eventually this gradual disenfranchisement of the Shi'i clerics culminated in the passage of a 1936 law abolishing religious courts altogether.<sup>148</sup>

By the time Mohammad Reza Shah assumed the throne in 1941, the Iranian legal system had continued to mature.<sup>149</sup> Most notably, Iranian courts had grown in sophistication, with clearly defined jurisdictions and classifications for claims.<sup>150</sup> Broadly speaking, judicial functions were spread between civil courts, which were supervised by the Minister of Justice; military courts, which were supervised by the Minister of War; locally elected lay courts; rural Houses of Equity; and Councils of Arbitration in cities. Also of significance was the development of a court hierarchy.<sup>151</sup> A Supreme Court, comprised of 4 judges each and made up of 11 sections was established in Tehran.<sup>152</sup> In provincial capitals, Criminal High Courts served as courts of first instance.<sup>153</sup> This court was presided over by three judges in minor cases and five in more serious matters.<sup>154</sup> Within criminal cases, the burden of proof was on the state.<sup>155</sup> In civil actions, these same courts also served as courts of appeals.<sup>156</sup> Two judges oversaw these civil cases, while a third might be introduced in the event that the two judges found themselves at an impasse in reaching a decision.<sup>157</sup> In addition to the Supreme Court and the dually functioning Criminal High Court / Court of Appeals, the lower ranking courts addressed more common legal issues and also acted as gateways to higher courts depending on a case's outcome<sup>158</sup>. Lowest Courts of First Instance, referred to as *Dadgah-e Bakhsh*, were given civil jurisdiction over matters involving controversies less than 50,000 rials.<sup>159</sup> Presided over by a single judge, these courts also oversaw criminal cases where the

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145. ARDALAN DAVAR, MY NAME IS IRAN: A MEMOIR, 27 (2007).

146. *Id.*

147. Entessar, *supra* note 105, at 93.

148. Baldwin, *supra* note 114, at 497.

149. Entessar, *supra* note 105, at 93.

150. Baldwin, *supra* note 114, at 497.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

accused's sentence was less than a month.<sup>160</sup> Likewise, Primary Courts of First Instance, known as *Dadgah-e-Shahrestan*, exercised civil jurisdiction in controversies exceeding 50,000 rials, as well as criminal jurisdiction over offenses which carried prison sentences exceeding one month, yet less than three years.<sup>161</sup> In such courts several judges oversaw cases in addition to a single prosecutor who would be assigned to the court.<sup>162</sup> In order to ensure that secular law was accessible to citizens in rural areas (while simultaneously preventing religious clerics from exercising any of their prior legal authority), Mohammad Reza Shah also established courts known as Houses of Equity or Village Tribunals.<sup>163</sup> Tailored to meet the needs of villagers, these courts heard civil claims involving less than 10,000 rials as well as disputes over movable property, family matters, nuisance complaints, and issues of adverse possession.<sup>164</sup>

### C. Legal Education

Especially during the reign of Mohammad Reza Shah, formal requirements for education within the legal profession began to take hold.<sup>165</sup> Just prior to the Islamic Revolution of 1979, two law schools were in existence: Tehran University which was public, and National University, which was private.<sup>166</sup> Due in part to the Iranian Bar Association being granted independent status to exercise authority as an organization in 1953,<sup>167</sup> criteria for admission to the bar were soon established.<sup>168</sup> In order to be admitted to the bar, an individual must have been an Iranian citizen of at least twenty-five years of age.<sup>169</sup> Additionally, applicants also must have been in good standing in terms of their character.<sup>170</sup> Finally, in addition to serving a year-long apprenticeship under the guidance of a lawyer who had at least ten years of experience in the legal field, candidates also had to pass an entrance examination prepared by the Iranian Bar Association.<sup>171</sup> Merely six years before the Islamic Revolution, it was estimated that roughly 1,500 individuals were admitted to the practice of law each year.<sup>172</sup>

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160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at 498.

164. *Id.* at 498–499.

165. *Id.* at 502.

166. *Id.*

167. Banakar & Ziaee, *supra* note 111, at 720.

168. Baldwin, *supra* note 114, at 502.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

### III. THE ISLAMIC REVOLUTION OF 1979 AND THE MODERN PERIOD: IRAN'S CURRENT LEGAL SYSTEM

An eruption of protests in 1977 led to widespread demonstrations, strikes, and riots which eventually resulted in the overthrow of the Pahlavi dynasty in January of 1979.<sup>173</sup> Upon the voluntary departure of Mohammad Reza Shah, religious clerics quickly seized power.<sup>174</sup> Led by Ayatollah Khomeini, a religious hardliner previously exiled from Iran due to his fierce opposition to the Pahlavi dynasty and its many reforms which he viewed as “westernizing,” the nation’s prior judicial system was immediately disbanded.<sup>175</sup> In the meantime, makeshift tribunals were established in every province, serving as the nation’s temporary legal system.<sup>176</sup> The development of a new constitution soon formalized the transformation of Iran into a theocracy—an Islamic Republic.<sup>177</sup> The judiciary was now to be structured around a strict interpretation of Islamic law.<sup>178</sup> The nation’s courts were eventually reinstated, yet in the wake of secular law, decisions were guided by extreme adherence to Islamic Sharia Law through instruments including the newly implemented Islamic Penal Code.<sup>179</sup> Likewise, the Iranian Bar Association was also disbanded as new requirements for the legal profession were implemented.<sup>180</sup> It would take several years before the Iranian Bar Association was permitted to revive.<sup>181</sup> Under the supervision of the Head of the Judiciary, its autonomy has been significantly stunted.<sup>182</sup> Meanwhile, as an institution acting as an extension of the theocracy, the legal system’s treatment of cases is often colored by biases, with court decisions perpetuating inequalities between men and women as well as contributing to the disenfranchisement of other vulnerable social groups.<sup>183</sup> Especially in the realm of criminal law, punishments are harsh, often drawing the attention of the wider international community with sentences perceived by many as human rights violations.<sup>184</sup> Furthermore, as the years have passed, the legal system has served as one of the primary means through which Iran’s theocratic government has

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173. Entessar, *supra* note 105, at 95.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. Tahmineh Rahmani, *Introduction to Iran’s Judicial System*, 45 J.L., POL’Y, AND GLOBALIZATION, 1 (2016).

180. Banakar & Ziaee, *supra* note 111, at 720.

181. *Id.*

182. *Id.*

183. Ghaemi, *supra* note 3.

184. *Id.*

maintained control over its citizens in the face of the slightest opposition.<sup>185</sup> So it has remained, with little change.<sup>186</sup>

#### A. The Reconstruction of the Legal System Following the 1979 Islamic Revolution

Upon seizing control of the Iranian government, Ayatollah Khomeini completely dismantled the judiciary.<sup>187</sup> In its place, revolutionary tribunals were instated in each province to hear both political and criminal cases while a new legal system was being developed.<sup>188</sup> In these tribunals, the rule of law was entirely absent from the proceedings.<sup>189</sup> Overseen by incompetent judges, in many instances, trials lasted mere minutes with no possibility of appeal.<sup>190</sup> During this time, the Iranian Bar Association was also disbanded and many of its former members were purged.<sup>191</sup>

In 1982, a reformed court system was re-introduced.<sup>192</sup> While this new legal system retained many key aspects of the prior legal system, most notably, clearly defined jurisdictions and procedural criteria, all legal decisions were now to be administered in accordance with Sharia law.<sup>193</sup> Furthermore, where once only secularly trained individuals could serve as judges, courts were hereafter to be presided over by *Mullahs*.<sup>194</sup> As it currently stands, Iran has what can be described as a three-tiered court system with several sub-layers.<sup>195</sup> This system is presided over by the Head of the Judiciary.<sup>196</sup> Serving a five-year term, the Head of the Judiciary is a position held exclusively by a *Mullah* who has been selected by the Supreme Leader.<sup>197</sup>

A State Supreme Court serves as the nation's highest judicial authority and is tasked with reviewing cases of capital offenses as well as death penalty cases.<sup>198</sup> Such cases include murder, rape, adultery, homosexuality, drug

185. *Id.*

186. Entessar, *supra* note 105, at 95.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. Banakar & Zaiee, *supra* note 111, at 720.

192. Entessar, *supra* note 105, at 95.

193. Rahmani, *supra* note 179, at 1.

194. Ghaemi, *supra* note 3.

195. Sanaz Alasti, *Laws of Iran – Global Legal Collection Highlights*, LIBRARY OF CONGRESS BLOGS (Sept. 24, 2013), <https://blogs.loc.gov/law/2013/09/laws-of-iran-global-legal-collection-highlights>.

196. Rahmani, *supra* note 179, at 2.

197. *Id.*

198. Maliheh Zare, *An Overview of the Iranian Legal System*, HAUSER GLOBAL LAW SCHOOL PROGRAM (2015), [https://www.nyulawglobal.org/globalex/Iran\\_Legal\\_System\\_Research1.html](https://www.nyulawglobal.org/globalex/Iran_Legal_System_Research1.html).

trafficking, armed resistance against the state, and crimes against the state.<sup>199</sup> More broadly, the Supreme Court is also responsible for ensuring that laws are properly implemented and that the nation's judicial proceedings are uniform.<sup>200</sup> Next, the Court of Appeals serves as a second instance court authorized to review the decisions of Public and Revolutionary Courts.<sup>201</sup> Finally, Public Courts act as courts of first instance and are further divided into two categories: Civil (first and second class) and Criminal (first and second class).<sup>202</sup> However, also embedded within this three-tiered system are Military and Revolutionary Courts which hear a wide variety of cases involving threats to national security, acts undermining the government, and narcotics smuggling.<sup>203</sup>

## B. The Presence of Sharia Law in Iran's Legal System

Iran's Islamic Penal Code contains many of the basic facets of Shi'i Sharia Law which are integrated within the legal system and implemented to varying degrees. *Qisas*, (the law of retribution) cover crimes involving various forms of intentional as well as unintentional personal injury and death.<sup>204</sup> Here, the perpetrator's punishment sought is proportional to their actions and harm caused to the victim.<sup>205</sup> Colloquially, these punishments are referred to as "eye for an eye" and "life for a life" sentences.<sup>206</sup> They vary in severity due to a range of factors including intent and age of a defendant.<sup>207</sup> The accused may avoid punishment if the victim or the victim's family formally forgive the perpetrator.<sup>208</sup>

Tied to *Qisas* is *Diyyeh* compensation.<sup>209</sup> Known as "blood money," *Diyyeh* compensation is available to a victim's family in the case of personal injury or death where a monetary value (negotiated by the parties involved) is placed on the harm sustained by the victim.<sup>210</sup>

*Hadd* crimes involve actions so serious that they may be considered "claims against God."<sup>211</sup> Likewise, they require an extremely high burden of proof (two witnesses or a confession, and, for crimes sexual in nature, four witnesses).<sup>212</sup> Crimes falling into this category have included adultery, rape, consumption of alcohol, sodomy, lesbianism, theft, apostasy, hiring a prostitute, false accusation

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199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. Entessar, *supra* note 105, at 97.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.* at 98.

210. *Id.*

211. *Id.* at 96.

212. *Id.* at 97.

of sexual crimes, and blasphemy.<sup>213</sup> Punishments for these crimes are pre-fixed and range from mutilation and lashes, to death.<sup>214</sup> Mitigating factors however, are taken into consideration, including repentance of the accused and forgiveness by a victim.<sup>215</sup>

Finally, *Tazir*, or deterrent crimes, include a wide range of offenses which can be further categorized as contraventions, misdemeanors, and felonies.<sup>216</sup> They may also be classified as civil crimes (including for example, armed robbery, aggravated assault, rape, and hooliganism) and crimes against the state (such as treason, activism, and espionage).<sup>217</sup> Here, a judge is given discretion in terms of how the accused is to be sentenced, which may include everything from prison, lashes, or even death.<sup>218</sup>

### C. Legal Education and The Legal Profession in Modern Iran

In 1991, the Iranian Bar Association was re-established.<sup>219</sup> While previously an autonomous organization, it has come to operate under the close supervision of the Head of the Judiciary.<sup>220</sup> By 1997, it was allowed to recover some of its prior independence.<sup>221</sup> Though it has repeatedly clashed with the Iranian government (which remains very suspicious of this institution due to its secular origins), the Iranian Bar Association continues to serve as a crucial actor guiding the legal profession.<sup>222</sup> Requirements for bar admission in modern Iran include passing several examinations along with the completion of an 18-month apprenticeship under the supervision of a lawyer who has had more than ten year's experience in the practice of law.<sup>223</sup> Over time, the number of practicing lawyers has increased steadily to an estimated 60,000<sup>224</sup>

In recent years however, the legal realm has also seen the emergence of legal practitioners referred to as Legal Advisors of the Judiciary.<sup>225</sup> Concerned that the Iranian Bar Association might come to monopolize the legal field, the Iranian government has enabled these individuals to bypass the Bar's formal legal education.<sup>226</sup> After passing a single qualifying exam and completing a 6-month pupillage, these practitioners can offer many of the same legal services

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.* at 98.

217. *Id.*

218. *Id.*

219. Banakar & Ziaee, *supra* note 111, at 720.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.* at 721.

226. *Id.*

once provided exclusively by Bar-certified lawyers.<sup>227</sup> The Iranian Bar Association has expressed its frustration over this matter, but is unable to take any further action.<sup>228</sup>

#### CONCLUSION

Iran is a nation steeped in history. Centuries have passed over it like sunrises and sunsets. From empire to kingdom, from kingdom to country, it has known many seasons. At each period, its laws have reflected those seasons. Within every set of reforms were utterances of the wider cultural climate. While Iran's legal system seems to have been both blessed and cursed by the inheritance of such a vast history as the nation has grappled with its past, present, and future, it has consistently reflected a greater desire for order and legitimacy. Within the many efforts for legal reform highlighted in this paper which have occurred over several hundred years, we see an ever-present reaching, a yearning for more, an unrest. While it is true that the current legal system, oftentimes viewed as being oppressive in nature, has changed very little over the past forty years, to consider it at rest conflicts both with the urgings of its people and the history of its land.

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227. *Id.*

228. *Id.*