

'Lawful Crimes' in Iran

by [Mohsen Sazegara \(/experts/mohsen-sazegara\)](/experts/mohsen-sazegara)

Jun 1, 2005

ABOUT THE AUTHORS

[Mohsen Sazegara \(/experts/mohsen-sazegara\)](/experts/mohsen-sazegara)

Mohsen Sazegara is a visiting fellow at The Washington Institute where he will focus on the prospects for political change in Iran and the role of the international community in the movement for democracy in Iran.

In the late 1970s, as an undergraduate at Sharif University of Technology in Iran



Brief Analysis

As this month's presidential election campaign gets underway in Iran, the Iranian government is emphasizing that the country enjoys the rule of law and elected government. In fact, both statements are false. To understand why the rule of law and representative government are absent in Iran, it is necessary to examine the country's constitution and laws.

An Unanswerable Government

The president, to be elected June 17, is not a particularly powerful figure in the Iranian system. Iran's true political power rests ultimately in the hands of the supreme leader, who is now Ayatollah Ali Khamenei. To whom does the leader answer? Does he answer to the nation, or to a body elected by the nation? No.

The Assembly of Experts elects the leader, and in accordance with Article 111 of the constitution it can dismiss him, but the constitution makes no provision for the Assembly of Experts to oversee the performance of the leader or the bodies under his auspices, including the judiciary.

And as a practical matter, not even the Assembly of Experts can dismiss the leader. Article 99 of the constitution reads, "The Guardian Council has the responsibility of supervising the elections of the Assembly of Experts, the president of the republic, the Islamic Consultative Assembly, and the direct recourse to popular opinion and referenda." The Guardian Council -- using its authority under Article 98 as the body that interprets the constitution's meaning -- has interpreted its power to supervise elections in a broad manner. The council vets all candidates who wish to run for a seat on the Assembly of Experts and approves or rejects their eligibility before they can appear on the ballot for election by the people.

The twelve members of the Guardian Council fall into two categories: the six clerical jurists, appointed directly by

the leader; and the six lawyers, nominated by the head of the judiciary (himself appointed by the leader) and approved by parliament. All twelve the members of the Guardian Council are appointed either directly by the leader or by his subordinates and are obedient to him.

In the vicious circle of Iran's current constitution, the responsibility for appointing and dismissing the leader falls on members of the Assembly of Experts. But members of the Assembly must pass muster with the Guardian Council, whose members were appointed by the leader. That explains why no member of the Assembly has ever said anything critical of the leader in public session. That is why the leader cannot be said to answer to anyone. Iran's constitution provides no checks or balances on the leader's boundless powers. Thus the judiciary, which reports only to the leader, also is neither accountable to the people nor limited in its authority.

Iran's Laws Limit Rights, Not Establish Them

Not only is Iran's government unanswerable to the people, but it regularly violates Iranians' human rights in the guise of the law. This misrule of law, too, is based on the constitution.

Articles 19 to 33, in the chapter, "The Rights of the People," specify certain rights as belonging to the Iranian nation. On the face of it, this chapter resembles the Universal Declaration of Human Rights. But, examined more closely, all but one of the articles therein are qualified and include phrases like "except as provided by law" or "unless detrimental to the fundamental principles of Islam." In contrast, all thirty articles of the Universal Declaration of Human Rights are asserted as absolute. The Universal Declaration of Human Rights defines human rights on the basis of the sovereignty, freedom, and autonomy of each person. The human rights defined in Iran's constitution are limited by the insistence in Article 4 that all rights and laws must comply with sharia. These two systems of rights are exact opposites: in one, the sanctity of the human individual serves as the foundation; in the other, religion -- or, more precisely, the six clerical Guardian Council members' understanding of religion -- is the foundation on which all rights are based.

A few examples clarify the issue.

Article 24 reads, "Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law."

Article 25 prohibits the interception of letters and telephone calls, censorship, and eavesdropping, except when provided by law.

Article 26 allows the formation of political parties and civic associations -- as long as they do not violate the principles of national unity, independence, and freedom; Islamic criteria; or the basis of the Islamic Republic.

Article 27 grants the freedoms of assembly and petition unless the government determines public gatherings,

marches, and protests to be detrimental to the fundamental principles of Islam.

The many vague phrases used in the laws implementing these rights have made it easy in practice for the state to impede anyone's freedom in any sphere of activity, to detain and imprison people, and to ban any publication.

Articles 498 and 499 of the Discretionary Islamic Punishments Law states that anyone who joins a group or association "detrimental to the country's security" at home or abroad shall receive a sentence of two to ten years in prison, yet the law defines neither "detrimental to" nor "the country's security" in any way.

Article 500 imposes a prison sentence of three months to one year for engaging in any kind of propaganda against the ruling system without defining any boundary between propaganda against the system and simple criticism of public officials. Article 610 states that whenever two or more people organize a conspiracy to act or facilitate action against the country's security, their sentences shall be two to five years in prison. In view of this article's inherent vagueness, any gathering or association can be broken up and the participants detained. In fact, many political activists and journalists have been sentenced to prison on the basis of Articles 500 and 610 alone.

Apart from these laws, the fatwas of clerical jurists can justify actions in accordance with Islamic criteria. A well-known Iranian tale tells the story of Ayatollah Qoddusi, a revolution court prosecutor who was assassinated in the early years after the victory of the Islamic Revolution. While prosecuting a case, Qoddusi wrote to Supreme Leader Ayatollah Khomeini to ask his legal opinion of whether a judge who believes that a suspect is lying can sentence the suspect to eighty lashes. Ayatollah Khomeini said, "Yes."

Regardless of whether that exchange of letters actually took place, it stands as a precedent. In practice, whenever an interrogator believes that a suspect is lying, he has a license to flog the suspect based on the prior permission granted by a sharia judge. And on the basis of Islamic jurisprudence, he does not need to administer the eighty lashes at a single session -- or to tell the suspect how many lashes will be administered or at what stage. So although Article 38 of the constitution says, "Torture cannot be used to obtain a confession or extract information," this simple jurisprudential ploy allows torture under another name. Because the Guardian Council is the interpreter of the constitution, and because its clerical members accept the fatwa of the eighty lashes, no violation of the constitution actually occurs when a suspect is tortured with the lash.

The Misrule of Law: The Kazemi Case

An example of how the rule of law works in Iran is the case of Zahra Kazemi, a fifty-four-year-old Iranian-Canadian journalist who died in Iranian custody in the summer of 2003. At a March press conference in Ottawa, Dr. Shahram Azam provided disturbing details about Kazemi's death. Azam reported that Kazemi suffered extensive injuries, including broken ribs and fingers and missing fingernails. She was raped, and then killed with a blow to the head.

Instead of launching an investigation into Kazemi's murder, or a prosecution of her killers, the Iranian government

forbade Kazemi's family from recovering her body, which was buried in secret in 2003. The main suspect in the case, Saeed Mortazavi, the public prosecutor of Tehran, was subsequently given the judiciary's outstanding-performance award.

Kazemi's treatment was the product of a judicial system with no checks or balances. Article 157 of the constitution states, "In order to fulfill the responsibilities of the judicial power in all the matters concerning judicial, administrative, and executive areas, the leader shall appoint a just, honorable man, well-versed in judicial affairs and possessing prudence and administrative abilities, as the head of the judicial power for a period of five years who shall be the highest judicial authority."

Even the justice minister, a cabinet member who serves as the link between the judicial and executive branches, is nominated by the head of the judiciary. The justice minister has no authority over judges, and he supervises other judicial personnel only if the head of the judiciary delegates that prerogative to him. So absolute power over the judiciary -- including appointment of judges -- rests in the hands of a single individual, the head of the judiciary, who is himself appointed by the supreme leader.

Conclusion

Iran has a constitution and specific laws that, on close scrutiny, turn out not to be laws at all because they can be interpreted in any way to the advantage of the rulers. The rulers can undertake any transgression against the rights of citizens and against the Universal Declaration of Human Rights in the guise of upholding the law. And Iran holds elections that are subject to the manipulation of the supreme leader, who is unanswerable to the people -- meaning that Iranian elections have little effect on who exercises political power.

Mohsen Sazegara is a visiting fellow at The Washington Institute.



RECOMMENDED



ARTICLES & TESTIMONY

[How to Make Russia Pay in Ukraine: Study Syria](#)

Feb 15, 2022

◆
Anna Borshchevskaya
(/policy-analysis/how-make-russia-pay-ukraine-study-syria)



BRIEF ANALYSIS

[Bennett's Bahrain Visit Further Invigorates Israel-Gulf Diplomacy](#)

Feb 14, 2022

◆
Simon Henderson
(/policy-analysis/bennetts-bahrain-visit-further-invigorates-israel-gulf-diplomacy)



BRIEF ANALYSIS

[Libya's Renewed Legitimacy Crisis](#)

Feb 14, 2022

◆
Ben Fishman
(/policy-analysis/libyas-renewed-legitimacy-crisis)

REGIONS & COUNTRIES

Iran (/policy-analysis/iran)