

“ Freedom of Thought and Expression in Iran: A Comparative Study of the ICCPR, Islamic Law and Iranian laws “

This research is a comparative study on the freedom of thought and expression within the International Law (mainly Article 18, 19 & 20 of the International Covenant on Civil and Political Rights, hereinafter the ICCPR), Islamic law and Iranian Laws.

I. Freedom of Thought, Conscience and Religion and Freedom of Expression in International Law:

Freedom of thought, conscience and religion is absolute under Article 18.¹ However, the freedom to manifest a religion or a thought and the freedom of expression is not absolute and is limited to two criteria: 1. rights and reputations of others, 2. protection of national security and public order². Moreover, any propaganda of war and hatred is prohibited under international law.³ Even though Iran has joined the ICCPR without any reservations, as will be demonstrated in chapter five and six of this research, freedom of thought and expression are breached within different laws of Iran (mainly the Penal Code and the Press Code) and in practice in various ways.

¹ Article 18: “1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

² Article 19: “1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

³ Article 20: “Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Since Iran is an Islamic state and according to article four of its Constitution,⁴ all of its laws should be based on *sharia* (Islamic law), the author finds it necessary to study freedom of thought and expression under Islamic law.

II. Freedom of Thought, Conscience and Religion and freedom of Expression in Islam

It should be noted that when speaking of Islamic law, a distinction between the traditional part and the evolutionary part of it is necessary. This distinction is between *sharia* and *fiqh*.⁵ *Sharia*, literally meaning “the way and path”, is the totality of God’s will as revealed to His prophet Mohammad. On the other hand, *fiqh*, literally meaning “understanding”, is the science of jurisprudence and the process of human endeavor to discern and extract legal rules from the sacred sources of Islam. These sources are: the Quran, the *sunna* (the practice of the prophet Mohammad), *ijma* (consensus) and *aghl* (reasoning). Hence, *sharia* is sacred and universal, but *fiqh* which is gained by human endeavor like any other system of jurisprudence, is subject to change. The problem arises when *fiqh* is mistakenly equated with *sharia*, both in popular muslim discourses and by politicians and legal specialists. Unfortunately,

⁴ Article 4 [Islamic Principle] : “All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons of the Guardian Council are judges in this matter.”

⁵ For this distinction, see Muhammad Hashim Kamali, “Sources, Nature, and Objectives of Shari‘ah,” *Islamic Quarterly* 33, no. 4 (1989): 216, and Khaled Abou El Fadl, *Speaking in God’s Name: Islamic Law, Authority, and Women* (Oxford, 2001), at 32–35. For an argument not employing the distinction, see Abdullahi An-Na’im, “Islamic Foundation for Women’s Human Rights,” in *Islam, Reproductive Health, and Women’s Rights*, ed. Zainah Anwar and Rashida Abdullah (Kuala Lumpur, 2000), at. 33–34.

many times the equation is made intentionally in order to silence and frustrate Muslims' search for justice and equality.⁶

Regarding this distinction, there are two schools of thought. The first is the dominant *ashaeri* school, which argues that our notion of justice is dependent on religious texts; whatever they say is just and not open to question. The *mutazili* school, on the other hand, argues that the value of justice exists independent of religious texts. Our sense and definition of justice is formed by sources outside religion, hence, it is innate and has a rational basis. In this research, I adhere to the second position, which has been used and developed by many scholars such as Abdolkarim Soroush, the Iranian reformist philosopher.⁷ According to Soroush, we accept religion because it is just, and any religious text or law that defy our contemporary sense of justice or its definition should be reinterpreted in the light of an ethical critique of their religious roots. In other words religion and the interpretation of religious texts are not above justice and ethics.⁸

Now considering my stance of Islamic law and based on the idea of the scholars from the *mutazil* school of thought, I examine the stance of Islam on the freedom of thought and expression.

The Principle of Non-Compulsion of Religion under Islamic Law

⁶ Towards Gender Equality: Muslim Family Laws and the Shari'a', in Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family*(Musawah: An Initiative of Sisters of Islam, 2009), accessible at < http://www.musawah.org/background_papers.asp > .

⁷ Online: <http://www.smi.uib.no/seminars/Mir-Hosseini/Questforequality.pdf> ; < For a discussion of conceptions of justice in Islamic texts, see Majid Khadduri, *The Islamic. Conception of Justice* (Baltimore, 1984).

⁸ Abdolkarim Soroush, " Religious Society, Ethical Society", lecture at Amir-Kabir University(Tehran, Iran, Summer 2004); Ziba Mir-Hosseini, *Ibid.*

The Quran says: “ There is no compulsion in religion: truth stands out clear from error, whoever rejects evil and believes in God has grasped the most trustworthy handhold that will never break and God hears and knows all things.”⁹

The recognition of freedom of expression under Islamic law as a birthright of every human being is confirmed by the Quran which states that: “ [God] The most Gracious!; [He] Taught the Quran; [He] created Man [and] taught him eloquent speech [expression] emphasis added.”¹⁰ There are a whole lot of recorded traditions and practice during the lifetime of prophet Mohammed and during the reign of the Rightly Guided caliphs after him to support that freedom of speech and expression was an acknowledged right from the inception of Islamic law.¹¹

The Restriction of the Freedom of Expression Under the Islamic law:

Under the *sharia*, the main objective of freedom of expression is the discovery of the truth and upholding human dignity¹². Islamic law endeavours a balance between these two principle objectives and does not accommodate the spread of evil or obscenity under the threshold of freedom of expression. While the Quran affirms that God gave mankind the power and freedom of expression, it also directs mankind to be always apposite in speech. It states clearly that: “God loves not the public utterance of evil speech.”¹³ And that “ ... those who love to see scandal broadcasted among the believers will have a grievous penalty in this life and in the hereafter.

¹⁴Thus, the freedom of expression under Islamic law is also not absolute but restricted

⁹ Q 2:256, For the English Translation of the Quran See: < <http://www.quranexplorer.com/>>.

¹⁰ Q 55:1-4.

¹¹ Muhammad Hashim Kamali, supra note 5.; Mashood A. Baderin. *International Human Rights ad Islamic Law*, (Oxford: Oxford University Press, 2003).

¹² This will be elaborated in chapter four of my thesis.

¹³ The Quran, An-Nisa: 4:148.

¹⁴ The Quran, Sura 24 (An-Noor) : 19.

to apposite speech and expressions, which is very similar to its restrictions under the international law (rights and reputation of others, public health and the prohibition of propaganda for war and hatred).

III. Freedom of Thought and Expression within Iranian laws and in Practice

However, in many Islamic countries such as Iran, apostasy, heresy, blasphemy and proselytization are criminalized within their laws and in practice,¹⁵ which clearly stands against freedom of thought and expression as defined under international law. The research tries to address and answer questions and dilemmas of this nature. Hence, the research is a comparative study of the freedom of thought and expression under International law, Islamic law and Iranian laws. It explores how freedom of expression and thought are deviated from its international standards. Moreover, it explores the reason for this deviation. Could it be Islam since according to the Iranian constitution,¹⁶ all laws should be based on Islam and a council of clergies are chosen as judges in this matter?¹⁷ Could it be other factors? What are these factors? How are these freedoms breached in practice and within different laws? What crimes are related to the breach of freedom of thought and expression in Iran?

Presentation of the Thesis

The thesis will be presented in six chapters:

Chapter one is an introductory chapter to the research and offers a theoretical and methodological framework to this study.

¹⁵ e.g.: Iran, Saudi Arabia and Pakistan.

¹⁶ *Constitutional Code*, Iran, 1979, Art 4. For the English Translation see: <
http://www.servat.unibe.ch/icl/ir00000_.html>.

¹⁷ *Ibid*, Art 4 : “ ... the wise persons of the Guardian Council are judges in this matter.”

Chapter two is on the question of universality and relativism of human Rights. The discourse is very important for my thesis since I observe freedom of thought and expression under three different legal traditions (1. the Iranian legal system, 2 The Islamic legal systems and 3. the International law.)

Chapter three is on freedom of thought, conscience and religion and freedom of expression under international law. More specifically article 18-20 of the ICCPR will be examined in this chapter and the restrictions permitted by the ICCPR will be elaborated.

Chapter four is on the freedom of thought, conscience and religion under Islamic law. In particular, the practice of many Islamic countries in criminalizing apostasy, heresy, blasphemy and proselytization will be addressed.

Chapter five observes freedom of thought, conscience and religion and freedom of expression under Iranian laws and more specifically under the Constitutional Code, Penal Code and the Press Code.

In chapter Six, the case studies will be examined which include the case of *bahais* (as an unrecognized religious minority in Iran whose freedom of thought, conscience and religion and freedom of expression are severely breached in various ways). The deprivation of *bahais* from education, jobs, pensions and business opportunities is of the most prominent manifestations of this breach.¹⁸ This breach could not be justified based on the ICCPR, since the right to freedom of thought, conscience and religion is absolute and there is no room for applying the state's discretion and margin of appreciation in providing this freedom. *Bahais* are put on trial for charges such as "traitors" and "espionage" for the CIA and Israel. It is well established that *bahais* are persecuted on the basis of their religious beliefs as the

¹⁸ Online: The Bahais, < <http://www.bahai.org/dir/worldwide/persecution> >.

criminal charges made against them have been dropped once *bahais* have repented.¹⁹ Classifying *bahais* as “traitors”, “spies” and “conspirators” enables Iran to pretend that its criminal justice system follows a more conventional model than it actually does.²⁰

My Other two cases include Masih Alinejad²¹ (parliamentary reporter) and Omid Memarian²² (journalist and blogger) both currently living in exile. They both paid a heavy price of imprisonment and torture for their freedom of expression.

Chapter Seven is the concluding chapter. The author brings her concluding remarks and her proposed approaches for the better implementation of these rights in Iran.

¹⁹ Roger Cooper, *The Baha'is of Iran*, Minority Rights Group Report 51 (London: minority Rights Groups, 1982), 13-15.

²⁰ Roger Cooper, *ibid*, at 13-14.

²¹ Online: < <http://masihalinejad.com/>>.

²² Online: < <http://omidmemarian.blogspot.com/>>.