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Criminal Law and the Legal System in Revolutionary Iran

Nader Entessar

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CRIMINAL LAW AND THE LEGAL SYSTEM IN REVOLUTIONARY IRAN

NADER ENTESSAR*

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I. INTRODUCTION

The purpose of this article is to analyze the penal code of the Islamic Republic of Iran and to examine the methods by which the administration of justice is exercised in post-revolutionary Iran.

The Iranian Revolution of 1978–79 was the culmination of a long struggle between the modern secularist trends that had engulfed Muslim societies for many decades and Islamic revivalist movements. The latter had contended that in order to save Muslim societies from internal decay, socio-political degeneration and Western domination, one would have to eschew Western secularist values and return to those of the early period of Islam. Perhaps no single manifestation of Western secularism in Muslim societies has been as disturbing to the revivalists as those reflected in the modern legal systems of Muslim countries. A return to *shari'a*, or Islamic law, has become the battle cry of Muslim revivalists from Tunisia to Egypt, and from the Levant to the Persian Gulf. In fact, a regime's adherence to the *shari'a* has become the litmus test of its Islamic solidarity and commitment to Islamic values.¹

For Ayatollah Khomeini and the Islamic militants who participated in the overthrow of the Pahlavi monarchy in Iran, the monarchical justice system was the primary channel for spreading corruption, inefficiency, and foreign political and cultural domination of the country. Offering a simple alternative to the notoriously slow and ineffective method of conflict adjudication during the Shah's reign, Khomeini stated:

... the method established by Islam for enforcing people's rights, adjudicating disputes, and executing judgments is at once simple, practical, and swift. When the juridical methods of Islam were applied, the *shari'a* judge in each town, assisted only by two bailiffs and with only a pen and an inkpot at

* Associate Professor of Political Science, Spring Hill College, Mobile, Alabama.

¹ See Mayer, *Islamic Law*, in ISLAM 240–41 (M. Kelly ed. 1984).

his disposal, would swiftly resolve disputes among people and send them about their business. But now the bureaucratic organization of the Ministry of Justice has attained unimaginable proportions, and is, in addition, quite incapable of producing results.²

In his political *magnum opus*, written before the Revolution and published under the title of *Islamic Government*, Ayatollah Khomeini severely criticized the European origin of Iran's legal system.³ He claimed that although some Islamic precepts had been added to the country's laws just to "fool the people," the anti-Islamic nature of the monarchical legal system was due to the overwhelming influence of French and Belgian jurisprudence.⁴ A further impetus for Ayatollah Khomeini to call for the replacement of Iran's judicial system with an Islamic one came from his conception of justice. As Khomeini contended, all secular governments, be they monarchical or republican, communist or capitalist, rely on man-made laws to govern their affairs.

In contrast, an Islamic government would rely on God-given laws, as enumerated in the holy Quran, which are infinitely more just than man-made laws even under the best of circumstances.⁵ In other words, justice as the expression of Divine Will should become an integral part of an Islamic society. The exercise of Divine Will is performed by the Prophet Mohammad and his rightful successors, or *Imams* as they are called in Shi'a branch of Islam, which is the dominant belief system in Iran. It is incumbent upon the believers to obey the Prophet and his successors who execute God's Sovereign Will.⁶

The two major divisions in Islam, the Sunni and the Shi'a schools, concur on the principle that either a member of the Prophet's family or a member of his tribe can exercise the Divine Sovereign Will for the Muslim community. The Shi'as contend that the Divine Sovereign Will can be exercised in a *just* manner only by a member of the Prophet's family. The Sunnis, on the other hand, have argued that "membership in the larger circle of the prophet's tribe was quite adequate for the requirements of political justice."⁷ This doctrinal difference between the Sunnis and the Shi'as has led to the latter's acceptance of the legitimacy of the principle of Imamate as the sole vehicle for establishing a just socio-political system. That is, the acceptance of Ali, the Prophet's son-in-law, as the first rightful successor to Mohammad, followed by Ali's male descendants in direct line, is for the Shi'as a *sine qua non* for establishing a just political order. However, according to the Twelver Shi'ism (the dominant sect in Iran), the Twelfth Imam went into occultation and will return at sometime in the future in the person of the Mahdi, or Messiah, when he will once again establish justice on earth.⁸ In the absence of the Twelfth Imam, the *ulema*, or religious scholars, would guide the Shi'a community on a righteous path.

As secular rulers gradually enhanced their power *vis-a-vis* the *ulema*, the religious authorities in the Shi'a communities were pushed to the fringes of the political order. As a consequence, the *ulema* became mere dispensers of opinions on religious exegeses and provided guidance for the believers on issues of faith. Ayatollah Khomeini intro-

² H. ALGAR, ISLAM AND REVOLUTION 58-59 (1981).

³ R. KHOMEINI, ISLAMIC GOVERNMENT 12-13 (1971).

⁴ *Id.*

⁵ *See id.* at 52-55.

⁶ M. KHADDURI, THE ISLAMIC CONCEPTION OF JUSTICE 14-20 (1984).

⁷ *Id.* at 16.

⁸ A. SACHEDINA, ISLAMIC MESSIANISM 78-79 (1981).

duced a radical dimension to this long-standing role performed by the Shi'a *ulema*. Khomeini argued against the notion that the duty of the *ulema* was simply to render advice to the believers. Instead, he maintained that when the advice of the *ulema* is disregarded by secular rulers, as was the case in Pahlavi Iran, the *ulema* are obligated to "take over authority and put an end to corruption and injustice."⁹ In order to accomplish this task in monarchical Iran, it was incumbent upon the *ulema* to establish an Islamic government under the guardianship of *velayat-e faqih* (government of the just jurist) and institute the *shari'a* as the only source of law in the country.¹⁰

II. SECULARISM AND CONSTITUTIONALISM: A BRIEF OVERVIEW

The Iranian legal system in the 20th century has been shaped, to a great extent, by the larger struggle between secular and religious forces. After the Iranian Constitutional Revolution of 1906-1907, the country developed a codified legal system adopted from the European legal codes with a heavy French influence. The modifications made to the Constitution in 1907, however, recognized the long-standing religious influence in the country's legal system by providing for a two-tiered structure in the new legal system. That is, a distinction was made between the secular law (*urf*) and religious, Islamic law (*shari'a*). The Muslim clerics were allowed to maintain exclusive control over family law, such as the law of marriage, divorce, succession, and the like. In general, the clergy, much to the dismay of the secular constitutionalists, continued to exercise *de facto* jurisdiction in most areas of civil law. The clergy's power to exercise near monopolistic control in civil cases was due primarily to the absence of any effective centralized governmental control over the country's nascent legal system.¹¹

Efforts at centralization and secularization of Iran's legal structures began in 1910 with the establishment of the Central Public Prosecutor's Office, and a year later, when the Ministry of Justice was reorganized to perform its constitutional mandate of centralizing the country's legal system. However, the first serious and sustained attempt to promulgate secular laws began when Reza Shah, the founder of the Pahlavi dynasty, assumed power in 1925. With the help of Ali Akbar Davar, the Swiss-educated Minister of Justice, Reza Shah embarked upon an ambitious program of overhauling the traditional Iranian legal system and codifying the law away from its Islamic roots and towards the European legal tradition. Reza Shah not only pushed the passage of a wide-ranging array of secular laws, he did so even when they expressly contravened the *shari'a*, hence incurring the wrath of the *ulema*.

Attempts at further secularization of the Iranian legal system continued under the rule of Reza Shah's son, Mohammad Reza Shah, the last of the Pahlavi monarchs. Furthermore, Mohammad Reza Shah sought to professionalize the appointment of judges by making it difficult for a cleric to function as a sitting judge in a court of law. For example, a law passed on December 27, 1946 required that judges hold a degree from the Faculty of Law at Tehran University (or an equivalent foreign university). Since the *ulema* had received their legal training in religious seminaries rather than at the

⁹ M. KHADDURI, *supra* note 6, at 225. See also J. COLE & N. KEDDIE, SHI'ISM AND SOCIAL PROTEST 1-29 (1960).

¹⁰ See H. ALGAR, *supra* note 2, at 40-49.

¹¹ See A. SALEH, ON THE HISTORY OF IRANIAN LAW (1964); A. MANSUR, HISTORY OF LAW AND GOVERNMENT (1960).

secular Tehran University, they were legally prevented from sitting as new judges in a court of law. The law also stipulated that the current judges who were not graduates of Tehran University Law Faculty or its foreign equivalent must pass an examination in both Iranian and international law in order to remain employed as judges by the Ministry of Justice.¹² The net effect of the provisions of the 1946 law was the disbarment of the overwhelming majority of the *ulema* and their removal from cherished judicial positions.

III. SOURCES OF LAW IN THE ISLAMIC REPUBLIC OF IRAN

With the victory of the Iranian Revolution in 1979 and the eventual monopolization of political processes by the Shi'a clerics, the Iranian Constitution of 1906-1907 was replaced by a new Constitution in which Shi'ism was declared as the sole source of law in the country. Shi'a Islam, in addition to relying on the Quran, takes into account the views and instructions of the Imams to formulate and codify its legal system. Twelver Shi'ism has been particularly influenced by the opinions of the sixth Imam, Abu Abdullah Ja'far bin Mohammad al-Sadeq, and hence its legal school is known as the Ja'fari school of jurisprudence. According to the Ja'fari school, sources of the Islamic law are the Quran, tradition (*hadith*), the consensus of the jurists (*ijma'*), and reason (*'aql*).¹³

The Quran is the most important source of law for all Muslims. The Quran, which was recorded by the Prophet's companions shortly after his death in 632 A.D., is regarded by Muslims as the actual revelation of God to the Prophet Mohammad and its legal rules are to be followed in absolute terms. However, as Ann Mayer has noted, "the traditional view has been that one cannot accurately understand what the Quranic rules mean unless one has advanced training in the religious and legal sciences."¹⁴ Since the Quran states relatively few defined rules (about 600 lines in the Quran deal with specific legal matters), three other sources have contributed immensely to the corpus of the Shi'a law.

The *hadith*, or tradition, refers to the statements, deeds and sayings of the Prophet and the Imams which have been collected and codified by people who were close to them and are viewed by the *ulema* as reliable sources. It is important to note that reliability, rather than the doctrinal views of the transmitters, is considered to be the most important attribute of the Shi'a *hadith*. The *hadith* collections, along with the Quran, constitute the most important sources of the Shi'a legal system.

The third source of Shi'a law is *ijma'*, which refers to the means by which the opinions of the Imams can be discovered. Specifically, *ijma'* refers to the consensus or unanimity of the views of Shi'a scholars who lived during the time of the Imams. Since several of the prominent Shi'a scholars were close companions of the Imams, the Shi'a doctrine places heavy emphasis on the opinions of these early Islamicists.

The fourth source of Shi'a law is *'aql*, or reasoning. By *'aql* it is meant "categorical judgments drawn from both pure and practical reason."¹⁵ In fact, according to the Shi'a principle of *qa'idat al-mulazama* (rule of correlation), it is possible to infer from reasoning a coherent body of religious law.¹⁶ It is important to note, however, that both *ijma'* and *'aql* are considered by some Shi'a legists as secondary sources of law. For them, the Quran

¹² See H. AMIN, MIDDLE EAST LEGAL SYSTEMS 61-62 (1985).

¹³ See H. TABATABA'I, AN INTRODUCTION TO SHI'I LAW 2-6 (1984). See also J. SCHACHT, AN INTRODUCTION TO ISLAMIC LAW (1964); N. COULSON, A HISTORY OF ISLAMIC LAW (1979).

¹⁴ Mayer, *supra* note 1, at 299.

¹⁵ H. TABATABA'I, *supra* note 13, at 3-4.

¹⁶ *Id.*

and *hadith* remain the indisputable sources of Shi'a law, and indeed they have become the pillars of the post-revolutionary Iranian legal system.

IV. THE POST-REVOLUTIONARY JUDICIAL STRUCTURES

The Iranian Constitution of 1979 not only terminated more than 2,500 years of monarchy in Iran, but it has also uniquely entrusted supreme power in the hands of Ayatollah Khomeini in his capacity as *velayat-e faqih*. Article 5 of the new Constitution states that in the absence of the Twelfth Imam, all political and legal power emanates from a "just jurist" whose leadership has been recognized by the majority of the Iranian people.¹⁷

In his capacity as supreme *faqih*, or jurist, Ayatollah Khomeini issued *fatwas* (judicial declarations) declaring all pre-revolutionary laws null and void. Furthermore, Articles 4 and 170 of the Constitution have placed a ban on all laws deemed to be "un-Islamic" by proper judicial and religious authorities of the country.¹⁸ In the absence of qualified judges who were trained to interpret Shi'a principles of law, the Supreme Judicial Council (the country's highest judicial body) instructed the Islamic courts to "refer to the judicial views [*fatwas*] of the Ayatollah whenever they were doubtful or unclear about a law."¹⁹

Moreover, the Council of Guardians, a body of jurists established by the 1979 Constitution with the power to veto the laws passed by the Parliament, informed the Supreme Judicial Council on April 16, 1981 that constitutionally only the Council of Guardians has the authority to pass final judgment on the propriety of any new law or the validity of any pre-revolutionary legislation. This apparent conflict of authority contributed to the confusion in implementing laws and regulations in the early periods of the Islamic Republic. The confusion became more acute in the administration of the criminal justice system where some degree of anarchy, or extreme diffusion of authority, reigned supreme, resulting in vastly different sentences for people convicted of committing the same type of transgression but living in different parts of Iran. It was not until the centralization of functions of the Islamic judges under the Supreme Judicial Council and the passage of *hudud* and *qisas* laws (to be discussed later) that some degree of uniformity was established in the administration of justice in the country.

V. CRIMINAL LAW IN THE ISLAMIC REPUBLIC

As was discussed before, the *shari'a* is considered the supreme law over everybody, and the government "cannot change the law to suit the ever-changing socio-economic climate."²⁰ This is especially true in the area of criminal law, where punishment for certain categories of crime is non-negotiable. Also, the supremacy and permanency of all Islamic laws connotes an important principle of the Islamic government: legislative and judicial organs of the state should not *originate* any laws. Their purpose is simply to *codify* and *apply* the *shari'a*. This implies that in cases of conflict between societal changes and the requirements of the Islamic law, the law is not to be interpreted in such a way as to meet such societal changes. Rather, it is the *society* that needs to adapt itself to the

¹⁷ H. HAMID, THE COMPLETE TEXT OF THE IRANIAN CONSTITUTION 23-24 (1983).

¹⁸ *Id.* at 23, 87-88.

¹⁹ H. AMIN, COMMERCIAL LAW OF IRAN 63 (1986).

²⁰ *Id.* at 32.

requirements of God's Will as contained in the *shari'a*.²¹ As Joseph Schacht has observed, the rules of the *shari'a* become valid "by virtue of their existence and not [necessarily] because of their rationality."²²

The concept of criminal law in Islam differs from the Western notion of the law, not just because it is religiously derived but because in many instances the subject of law is not the person but his family. For example, murder is viewed not as an offense against the society but as a crime against the victim's family. The punishment for murder, therefore, is designed to not only deter crime but also to "compensate" the family of the victim. Hence, retribution and "blood money" have been an integral part of the Islamic punishment for murder. This, in effect, is akin to the concept of *wergeld* practised by Western European nations from the 5th century to the advent of feudalism in the 9th century.

Notwithstanding the harsh methods of punishment in the Islamic criminal justice system, the Muslim judicial system was much more benign than the legal systems of Europe. For example, under the Islamic criminal law, only mentally sound adults were fully responsible for criminal acts they committed, whereas minors and the mentally ill were not responsible for many criminal transgressions.²³ Furthermore, as I.P. Petrushevsky has observed:

Muslim law does not allow the use of torture (which several European countries employed as late as the eighteenth century) nor does it countenance 'the diving decision' whether in the shape of the *ordalia*, the ordeal by fire and water, or of the legal duel between plaintiff and respondent, as practised in Western Europe and Russia in the Middle Ages Its [Islamic] criminal procedure was marked by speed and expedition and was innocent of the judicial delay, . . . which characterized European and Russian courts in the last century.²⁴

Whereas Islamic criminal law remained unchanged for centuries, reforms and alterations in much of Western law have incorporated safeguards and guarantees of protection for the accused; they have also adapted the law to reflect societal mores and changing values.

The Quran deals only with a few categories of crime with specific punishment for each. These transgressions include adultery, consumption of alcohol, fornication, theft, brigandage, and accusations of unchastity. According to the dominant Shi'a doctrine, as well as some Sunni schools of law, apostasy and rebellion against a righteous Islamic government also fall into the category of crimes with Quranic punishments, which range from flogging to execution. The apparent incongruity of such punishments as public floggings, mutilations and stoning to death, with the modern and internationally accepted norms of conduct, is lost on the proponents of the literal application of Quranic punishment, as they argue that only such public spectacles will deter the occurrence of future crimes.²⁵

In general, the Islamic Republic's penal code has divided crimes into the four categories of *hudud*, *qisas*, *ta'zir*, and *diyat* based on the type of punishment for each category of offense. *Hudud* crimes are acts prohibited by God and punishable by man-

²¹ See Y. NOORI, ISLAMIC GOVERNMENT AND REVOLUTION IN IRAN 11-74 (1985).

²² J. SCHACHT, *supra* note 13, at 203.

²³ I. PETRUSHEVSKY, ISLAM IN IRAN 135 (H. Evans trans. 1985).

²⁴ *Id.*

²⁵ Mayer, *supra* note 1, at 242.

datory penalties defined by the Quran.²⁶ Although Islamic jurists differ on the precise nature of *hudud* crimes, the Iranian penal code considers the following as *hudud* offenses: theft, robbery, adultery, apostasy, drinking of alcoholic beverages, and rebellion against Islam as interpreted and defined by the religious authorities and legislators in Iran.

Since *hudud* crimes are specific and their penalties are specified in the Quran, the judge exercises no discretion as to the type of punishment imposed. The harshness of the punishment of *hudud* crimes, such as the amputation of hands for theft or stoning to death for adultery, have cast a negative image on revolutionary Iran's administration of justice. However, the Iranian authorities rebut Western criticism of their country's system of justice by claiming that lawbreakers should not be seen simply as sick individuals, and their punishment as a form of treatment for their sickness. As the Islamic Republic's Chief Justice, Ayatollah Mussavi Ardabili, has contended: "Islam teaches us that it is equally important to punish a lawbreaker, as a punishment is considered to have three purposes — repentance of the crime, admonition to not repeat it, and a lesson to others."²⁷ In the same vein, Ayatollah Khomeini, responding to domestic critics of Iran's new penal code, stated: "When a measure of punishment is carried out, it teaches the person concerned a lesson and this is beneficial for the nation It is a sin to be merciful to someone who should be receiving a certain measure of punishment. In fact, it would be damaging to the person concerned" ²⁸

Of all punishments of *hudud* crimes, severance of thieves' hands has become the most frequent method of punishment under Iran's Islamic penal code. The authorities have, in fact, boasted that they have developed a perfect device for the speedy amputation of hands, which is carried out primarily by the Judicial Police inside the prisons. According to Abbas Hashemi Ishaqpour, the head of the Judicial Police, several persons from the Ministry of Health, Coroner's Office, and Tehran and Beheshti Universities Medical Faculty have been consulted to develop a "safe and speedy" method of amputation of arms and hands.²⁹

Qisas crimes include murder, manslaughter, battery and mutilation. The Islamic law regards such offenses as acts against the victim and his family and allows for "inflicting on a culprit an injury exactly equal to the injury he inflicted on his victim."³⁰ The decision to inflict retribution on the culprit rests with the victim and the victim's family in case of murder. Although retribution in kind and vendettas are allowed under the *Qisas* crimes and punishment, it is important to note that both the Quran and the Iranian penal code recommend forgiveness, because the act of forgiving pleases God.³¹ On numerous occasions, Ayatollah Khomeini has chastised the clerical authorities for their zealous advocacy in encouraging retribution and vendettas in *qisas* cases.³²

²⁶ G. HOJATI-ASHRAFI, *THE COMPLETE COLLECTION OF THE PENAL CODE AND CRIMINAL REGULATIONS* 3M–4M (1986). See also I. PETRUSHEVSKY, *supra* note 23, at 136–38; Al-Alfi, *Punishment in Islamic Law*, in *THE ISLAMIC CRIMINAL JUSTICE SYSTEM* 227–28 (M. Bassiouni ed. 1982); M. EL-AWA, *PUNISHMENT IN ISLAMIC LAW* 23–24 (1982).

²⁷ Iran Times, August 9, 1985, at 1, col. 1.

²⁸ *Id.*

²⁹ Kayhan, November 21, 1984, at 4, col. 2; Iran Times, December 7, 1984, at 4, col. 1. The first usage of the "amputation machine" occurred in February 1985 when a thief's hands were amputated in Tehran's Qasr prison. See Iran Times, February 15, 1985, at 1, col. 2.

³⁰ M. EL-AWA, *supra* note 26, at 69.

³¹ See G. HOJATI-ASHRAFI, *supra* note 26, at 14M–23M; Iran Times, October 1, 1982, at 12, col. 1.

³² See Iran Times, September 7, 1984, at 5, col. 3.

The practice of *qisas*, more than any other aspect of Islamic criminal law, had its origin in pre-Islamic Arabia, where acts of vengeance and blood feuds pitting one bedouin tribe against another were accepted practices of conflict resolution. With the advent of Islam, the practice of taking vengeance against the whole tribe was reduced to acts of retribution against the culprit alone and not his family or tribe. Also, the family of the victim was allowed to ask for alternatives, such as blood money, or even forgiveness of the slayer, rather than physical acts of vengeance.³³

Ta'zir offenses are those for which no specific penalties are mentioned in the Quran or *hadith*. Therefore, the punishment of *ta'zir* is left to the discretion of the Islamic judge, who should take the public interest and changing requirements of the time to mete out an appropriate punishment.³⁴ However, the judge's discretionary power is not boundless. In the Islamic penal code, the range of punishment of *ta'zir* crimes has been determined and codified in law, which ranges from admonition, to fines, to seizure of property. Such punishments also include public flogging, which has become a common *ta'zir* punishment in the Islamic Republic of Iran for such offenses as "immoral behavior," "immodest clothing," public drunkenness, and the like.

Diyat punishment is not strictly a separate category of punishment under the Islamic law. It refers to a form of compensation, or blood money, which is to be paid to the victim or his family as reparation for an injury or murder.³⁵ In other words, *diyat* becomes a form of punishment if a victim or his family (in case of unintentional manslaughter) choose to forgo their right of retribution under *qisas* and instead demand blood money from the perpetrator of the crime. The Iranian penal code has extensively codified the nature of *diyat* for various types of crimes and the time element required in payment of *diyat* in each case.

VI. THE CRIMINAL COURT SYSTEM

The Constitution of 1979 delegates the administration of justice in Iran to the Ministry of Justice. The specific organs within the Ministry of Justice which deal with criminal matters are explained below.

A. Supreme Judicial Council

This is the highest ranking judicial body in the Islamic Republic. Like many other post-revolutionary organizations, the Supreme Judicial Council was established shortly after the victory of the Revolution on an *ad hoc* basis. The Council's status as the country's supreme body of judicial authority was later confirmed by Article 157 of the 1979 Constitution. In addition to having wide latitude in interpretation of the application of the *shari'a*, the Supreme Judicial Council has the ultimate authority over the appointment, promotion, suspension, and dismissal of all judges in Iran.³⁶ Furthermore, all five members of the Supreme Judicial Council by law must be *mujtahids* (learned scholars of the Islamic law) whose righteousness has been demonstrated through several years in the study of Islamic jurisprudence, and their authority must be confirmed by *velayat-e faqih*,

³³ I. PETRUSHEVSKY, *supra* note 23, at 136; M. EL-AWA, *supra* note 26, at 69-77.

³⁴ See AL-ALFI, *supra* note 26, at 227-28.

³⁵ Official Gazette (Tehran), December 29, 1982, at 12, col. 1.

³⁶ This power was entrusted to the Supreme Judicial Council by the Law of July 9, 1980.

now Ayatollah Khomeini.³⁷ Members of the Supreme Judicial Council serve a five year renewable term. Three members of the Council are elected by sitting judges of various Islamic courts. The other two Council members are ex-officio members who have been appointed to their post by Ayatollah Khomeini. They are the Chief Justice of the Supreme Court and the General Prosecutor.³⁸

B. *The Court of Cassation or the Supreme Court*

As the name indicates, the Court of Cassation is the highest court in the country. According to Article 161 of the Islamic Republic's Constitution, the Supreme Judicial Council determines the laws under which the Court of Cassation will operate. The Court, in turn, is responsible for supervising the proper application of laws in lower courts and for creating unity in judicial policy of the country.³⁹ The President of the Court must be a *mujtahid* and is appointed to his post for a period of five years by the Leadership (i.e. *velayat-e faqih*).

C. *Public Courts*

These were established after the Revolution to deal with both civil and criminal cases. In their criminal domain, the Public Courts are divided into two sub-categories: (1) First Class Criminal Courts, and (2) Second Class Criminal Courts. The former category's jurisdiction is in major criminal cases where the conviction normally carries a death sentence, or long-term imprisonment and heavy fines.⁴⁰ The Second Class Criminal Courts have jurisdiction over minor crimes, such as vagrancy, beggary, failure to obey the rules and regulations of the police, municipal officials, and the like. Since the sentences handed down by the Second Class Criminal Courts are light, their decisions are final and cannot be appealed to a higher court. The decisions of the First Class Criminal Courts, however, can theoretically be appealed to the Court of Cassation if the penalty involved is more than two months of imprisonment. In practice, it is extremely difficult to go through the appeals process in individual criminal cases, since the Court of Cassation does not see itself as an arbiter of decisions handed down by other *mujtahids*. In cases of capital punishment it is the Supreme Judicial Council, not the Court of Cassation, that can pass the final judgment on a criminal case.⁴¹ Public Criminal Courts are headed by a *hakim-e shar'* (religious judge). These judges are nominated by the powerful Qum Theological Seminary and appointed to their posts by the Supreme Judicial Council. Furthermore, the Supreme Court of the holy city of Qum, which is a recognized judicial authority on its own, monitors the decisions handed down by the Public Criminal Courts, especially in cases of capital punishment.

VII. SPECIAL CRIMINAL COURTS

A number of ad hoc "courts" emerged on the scene shortly after the revolution to mete out immediate punishment to the "offenders of the Islamic mores" and "enemies

³⁷ Sections 2(2) and 3(4) of the Law of April 30, 1980.

³⁸ H. HAMID, *supra* note 17, at 85.

³⁹ *Id.*

⁴⁰ Art. 198, Penal Procedure Court of the Islamic Republic of Iran.

⁴¹ Iran Times, November 22, 1985, at 2, col. 2.

of the Islamic Republic." The *Komiteh* (Committee) Courts and the Revolutionary Courts are prime examples of these special courts.

A. *Komiteh* Courts

Shortly after the victory of the Revolution, some residents of each neighborhood in major cities set up committees to guard the security of their neighborhood in the wake of the virtual collapse of the Shah's police force, and to enforce "fundamentalist moral and religious standards upon the residents in their neighborhood."⁴² These committees have performed quasi-independent judicial functions and have interfered with the legally instituted judicial organs.

They have flogged individuals found drinking in the confinements of their own private homes; have physically punished youths holding the hand of a girlfriend; and have shown no respect for privacy or individual freedom; even playing Western music has occasionally resulted in arrest and punishment⁴³

Although the semi-anarchic nature of the *Komiteh* Courts has been changed and many of them have been amalgamated into the Revolutionary Courts, they occasionally revert to their earlier status as self-appointed guardians of Islamic moral codes.

B. *Revolutionary Courts*

Islamic Revolutionary Courts were first established in 1979 in the immediate aftermath of the Iranian Revolution as a temporary means to try to speedily punish hundreds of officials of the deposed Pahlavi regime. The authority of the Revolutionary Courts was derived from the Islamic Revolutionary Council, the secretive body that governed the country in the early months of the Revolution.⁴⁴ From their limited early jurisdiction, the mandate of the Revolutionary Courts has been vastly expanded and now includes jurisdiction over the following categories of offenses: (1) all crimes against Iran's security, (2) waging war on God and corruption on earth, neither of which has been defined by law, and hence are left to the discretion of the judge in a Revolutionary Court, (3) narcotics smuggling, (4) attempts on the lives of the country's political and religious authorities, (5) plunder of the public treasury, (6) hoarding and profiteering, and (7) acts that are designed to consolidate the remnants of the Pahlavi monarchy and/or help other opponents of the Islamic Republic.⁴⁵

According to Article 4 of the Administrative Regulations Governing the Revolutionary Courts and Public Prosecutor's Office, the sweeping judicial power of the Revolutionary Courts are exercised by a three member panel. The panel consists of a religious judge (appointed by Khomeini), a civil judge (nominated by the Ministry of Justice and approved by the Court's religious judge), and an individual "trusted by the people" (and approved by the aforementioned religious judge). In practice, however, the Revolutionary Courts have become dominated by the religious judge, and in political cases, the Revo-

⁴² H. AMIN, *supra* note 12, at 136.

⁴³ *Id.* at 136-37.

⁴⁴ S. BAKHASH, *THE REIGN OF THE AYATOLLAHS* 59-63 (1984).

⁴⁵ Official Gazette (Tehran), May 10, 1983, at 11, col. 1.

lutionary Court "may well consist of a one-person tribunal, namely a religious judge."⁴⁶ The overwhelming number of executions carried out since 1979 have been the result of the decisions of the Revolutionary Courts whose decisions are final with no right of appeal.

C. *Special Criminal Courts for the Clergy*

A new set of criminal courts has been set up since mid-1987 for the purpose of trying persons accused of "counter-revolutionary and anti-clerical crimes."⁴⁷ The judicial scope of these criminal courts has been ill-defined by law and remains vague. In fact, in the opinion of many observers, these special courts were established to oust clerics who were not supportive of the Islamic Republic's policies. Irrespective of the motives behind their establishment, these courts have pursued a sustained policy of handing down decisions against several clergymen in the country. The first execution of a clergyman by the order of a criminal clerical court occurred on October 13, 1987 when Ali Shahidi, a junior cleric convicted of narcotics violations, consumption of alcohol, and "spreading corruption," was stoned to death in Tehran.⁴⁸

VIII. CONCLUSION

The foregoing discussion on the legal system in the Islamic Republic of Iran raises a number of disturbing issues. First, an analysis of the practices and procedures of the various criminal courts by independent international human rights organizations, as well as reports issued by several judicial and religious authorities in the Islamic Republic, have shown the conduct of these courts to be highly arbitrary.⁴⁹ This can be attributed partly to the domestic turbulence of the early phases of the Islamic Republic's existence and the concomitant zealotry of individuals who sought vengeance on those suspected to be supporters of the *ancien régime*. It could also be attributed to unqualified legalists who misinterpret the Islamic Republic's penal code.

Second, the application of many types of penalties imposed for criminal offenses, such as public flogging and stoning, has come into direct conflict with the accepted procedures of public international law and international human rights standards. The Islamic Republic's authorities have tended to dismiss summarily the conflict between the punishments imposed under Iran's penal code and the generally accepted international standards of criminal prosecution and punishment. The Iranian authorities have consistently asserted that divine laws supercede any international man-made standard, and that Islamic law is always supreme over "both customary and conventional international law."⁵⁰ Consequently, protestations of and/or inquiries made by such human rights organizations as Amnesty International or the International Commission of Jurists have been disregarded by the Iranian authorities as either irrelevant or as sinister attempts by the secular West to undermine the institutions of the Islamic Republic.⁵¹

⁴⁶ AMNESTY INTERNATIONAL, *IRAN: VIOLATIONS OF HUMAN RIGHTS* 29 (1987).

⁴⁷ *Iran Times*, July 17, 1987, at 4, col. 3.

⁴⁸ *Kayhan*, October 14, 1987, at 8, col. 2.

⁴⁹ AMNESTY INTERNATIONAL, *LAW AND HUMAN RIGHTS IN THE ISLAMIC REPUBLIC OF IRAN* (1980).

⁵⁰ H. AMIN, *supra* note 19, at 30.

⁵¹ AMNESTY INTERNATIONAL, *supra* note 46, at 56-69.

Finally, the jurisdictional competence of the so-called special criminal courts, such as the *Komiteh* and Revolutionary Courts, and their exercise of *de facto* extrajudicial authority, have cast a dark shadow over the fairness of trials in such courts. The largely undefined categories of crimes, such as *mofsed-e fil arz* (corrupt on earth) or *moharebeh ba Khoda* (enmity to God), both of which carry the death penalty, have allowed the judges of the special courts to exert an undue amount of arbitrary power over the criminal procedures and have removed any semblance of impartiality in criminal trials in the Islamic Republic of Iran.