Published: September 15, 2009
Last Updated: April 13, 2015

JUDICIAL AND LEGAL SYSTEMS V. JUDICIAL SYSTEM IN THE 20TH CENTURY

JUDICIAL AND LEGAL SYSTEMS

v. Judicial System in the 20th Century

Twentieth-century Iran experienced dramatic changes to its judicial system during the following periods:

(1) Constitutional Period.

(2) Pahlavi Period.

(3) Post-revolution Period.

(1) Constitutional Period

The supplement to the Constitution (*motammem-e qānun-e asāsi*), enacted in October 1907 (see CONSTITUTIONAL REVOLUTION iii. THE CONSTITUTION; Browne, pp. 372 ff.), dealt with the establishment of modern courts. Four new civil courts were established, namely the court of property and financial claims (*maḥkama-ye melki o naqdi*), the criminal court (*maḥkama-ye jazā*), the court of appeals (*maḥkama-ye estināf*), and the court of cassation (*divān-e*

tamiz), which existed in name only. However, there were no laws other than religious and customary law, and the judges had been trained in religious schools (*madrasa*). In the absence of any codified civil law and procedures, the courts followed the *šariʿa* practice, and their verdicts lacked uniformity and were sometimes even contradictory. Since there was no settlement mechanism between courts, disputed sentences were appealed to religious authorities (*mojtahed*), whose rulings were often different from the decisions of the civil courts. Therefore, a court was created in 1908, and directives were drawn up for settling differences of decision between the courts. Attempts to codify the *šariʿa* law to facilitate the work of the court was strongly opposed by the ulama, who considered the administration of *šariʿa* law to be their own exclusive domain (Ṣadr, pp. 174-75; Matindaftari, p. 14; Banani, p. 69; Floor, pp. 126-27).

The reforms of Mošir-al-Dawla. When in 1910 Mošir-al-Dawla Ḥasan Pirniā became minister of justice, he asked parliament for a separate budget for his ministry so that he could pay judges and other judicial staff. Judges often remained unpaid, and therefore the ministry levied a fee of 5 percent from the plaintiff and 10 percent from the defendant on the value of the verdict. The judiciary was an independent, separate branch of the state, and no judge could be dismissed or transferred from his office according to the supplement to the Constitution (Arts. 27-28, 81). In 1911, Mošir-al-Dawla, in order to rid the system of incompetent judges, dissolved the entire ministry and paid all judges their outstanding dues while receiving their resignations. He also established a few temporary judiciary offices to handle the daily routine. He then began to hire new people, including ʿAli-Akbar Dāvar, future architect of the modern judiciary in Iran, as the public prosecutor of Tehran, and thus the first steps had been taken towards infusing young blood into the system. Through the good offices of Moḥsen Ṣadr (Ṣadr-al-Ašrāf), Mošir-al-Dawla had the Majles (parliament) form a judiciary committee, presided over by Sayyed Ḥasan Modarres and consisting of religious clerics, to approve some codes that Mošir-al-Dawla would submit in order to be used temporarily on an experimental basis before they could be presented to the Majles for passage. The approval of Modarres's committee came at a price, for it added seven articles to the law that widely opened the door to the referral of cases to religious courts, which meant that the common law courts could not prosecute all cases (Art. 148; Golšāʾiān, I, pp. 55-56; Matindaftari, pp. 14-17; Ṣadr, pp. 212-14; Kasravi, pp. 93, 110-11, 119; Bāstāni Pārizi, pp. 31-34; Ṣāleḥ, pp. 971-74).

To avoid a conflict with the ulema, Mošir-al-Dawla requested the Majles to allow the laws concerning the judiciary system and civil procedure take effect temporarily and on an experimental basis, thus avoiding the required discussion regarding whether the new law was in harmony with the *šariʿa* or not. Majles enacted the Provisional Code of Judicial Organization (*Qānun-e mowaqqati-e taškilāt-e ʿadliya*) on 21 Rajab 1339/18 July 1911 and the Provisional Code of Civil Procedure *(Qānun-e mowaqqati-e oṣul-e moḥākamāt ḥoquqi*) on 26 Ramażān 1329/19 September 1911 and 19 Ḏu'l-Qaʿda 1329/10 November 1911. The idea was that problems could be avoided if the laws and regulations would be submitted for final approval after they had already been tested in practice and improved upon.

The law did not clearly define what were *šarʿi* matters and what *ʿorfi* matters, but the former in practice were limited to questions of family law, as in previous centuries, such as cases concerning marriage (*nekāḥ*), divorce (*ṭalāq*), insolvency (*eflās*), misappropriation (*ḡaṣb*), pious foundations (*waqf*), and the appointment of legal guardians. The courts were divided into common law (both civil and criminal) and special courts (including religious). The common law courts (*ʿadliya* courts) included the supreme court of cassation (*tamiz*), the court of appeals (*estināf*), the court of first instance (*ebtedāʾi*), the criminal court (*jazāʾi*), and the petty court (*ṣolḥiya*). Criminal cases were divided into four categories, which were dealt with by different courts in accordance with the new law. Civil cases were of three kinds: *šarʿi* or religious, *ʿorfi* or customary, and *moštarak* or mixed cases. In the latter case a decision had to be made by the court, religious or customary, that had been given the case. The new law made religious courts now part of, and an instrument of, the state's judiciary, and its judges were also appointed by the state. In fact, due to the lack of qualified personnel, religious judges often served on the benches of modern courts. As a result, the religious establishment initially had more control over the judiciary than they had ever had before (Golšāʾiān, p. 54; Kasravi, p. 145; Mostowfi, II, p. 375).

Working conditions in the judiciary. After this initial outburst of legislation and judicial changes following the Constitutional Revolution, there was a period of relative inaction due to internal political malaise and the outbreak of World War I and its political and economic aftermath. Also, the formulation of new laws and the establishment of the new legal system took time, because there was a dearth of qualified, legally trained personnel, buildings, and budget in Iran. In the early 1920s, the Ministry of Justice was housed in the Amir Kabir

building near the Arg. Space was at a premium. As small and cramped as the ministry itself was, so were the *ʿadliya* or law courts that it oversaw, of which only a few branches existed. There were fewer than ten examining magistrates and all of them were in the same building (Golšāʾiān, I, pp. 52-53).

In the first two decades of the 20th century, all the judges had been trained in traditional schools (*madrasa*) and wore clerical garb; only the three assistants of the French legal advisor (1911 to 1926), Adolphe Perny, wore European dress in the ministry. This composition of the staff was also reflected in the judges' working ethos. Being religious, they also took holidays when there were religious events or deaths in the family (Golšāʾiān, I, p. 54).

The drafting of new laws was initially undertaken by Perny, who had also drafted the civil code of 1911. Every Wednesday, a group consisting of the minister of justice, his deputy, the president of the high court (*raʾis-e divān-e tamiz*), the public prosecutor (*moddaʿi-al-ʿomum*), one of the department chiefs of the Ministry of Interior, and the chief secretary of the ministry concerned met in the room of the legal advisor. The meeting had as its objectives: (1) to finalize legal draft texts that were to be submitted to the Majles, and (2) to appoint, dismiss, promote, or demote judges. However, often the discussion was about the weather and other such mundane things and, as a result, sometimes no legal dossier was discussed for months (Golšāʾiān, I, p. 53).

Most judges were mullahs who had good knowledge of *feqh* and were experienced as to judicial matters, and some of them were famous for their knowledge of the *šarʿia*. However, they had less or even no idea of modern legal concepts, and most of them were not in favor of judicial reforms. Iran had a number of schools that produced students trained in modern subjects and ideas, such as the Dār al-Fonun, the Madrasa-ye ʿolum-e siāsi, and since about 1920, the Madrasa-ye ḥoquq that trained lawyers and was staffed mainly by French judicial personnel who formed a pool of potential judicial personnel (Golšāʾiān, I, pp. 52-54).

Coup d'État of 1921 to the end of Qajar period. The coup d'etat of February 1921 also had consequences for the judiciary. The new prime minister, Sayyed Żiāʾ-al-Din Ṭabāṭabāʾi, immediately sent orders that all *ʿadliya* courts were to be closed. The dismissal of the judicial personnel indeed happened in the provinces. For instance, it was reported that "from March to August 1921 the law courts in Dezful were closed at orders of Ziya al-Din when they were being reformed" (GIAR "for the year 1921," p. 46; Kasravi, p. 121). In some regions,

such as Khuzestan, the judicial court all but disappeared, with minor cases overseen by the police commissioner, and the serious ones by the Shaikh (GIAR "for the Year 1921," p. 37), a situation that would persist throughout the decade. The courts in Kerman were also closed. "The Rais Adliye was asked to submit 10 names that would be suitable to function in the new system" (GIAR "for the Year 1921," p. 23). Although Sayyed Żiāʾ-al-Din fell from power on May 24, the new cabinet did not reopen the courts immediately (Kasravi, pp. 121, 128). "However in August the old corrupt department [in Kerman] was opened again with its original staff" (GIAR "for the Year 1921," p. 23).

With the cancellation of the reform initiative, the old situation was reverted to, but not without difficulty. Salaries were not paid on time, invariably with a delay of six months, although the French legal advisor was paid his 8,000 tumans every month (Golšāʾiān, I, p. 58). Kasravi fulminated against the payment of such a high salary and argued that the ministry had no need for a foreign advisor. After the coup d'etat of 1921, the army was paid directly from the indirect taxes that it collected itself, and the rest of the revenues, if any, were divided among the other ministries. Sometimes, when payments were made, soldiers would go to a ministry and confiscate the money for the army. Even when a person had already signed the list of payments, he would have no claim on the money if the military had already taken it away for its own use. Because the budget remained tight, the government decided in 1922 to cut costs at each ministry; the share of the Ministry of Justice was 300,000 tumans, which led to some dismissal of staff and the suppression of some branches of courts by dissolving them (Golšāʾiān, I, p. 59; Kasravi, p. 252). This also happened in the provinces; for example, in Kerman "the Solhieh which decided civil suits to 250 tumans was dissolved and its duties thereafter taken over by Ibtidaʾi court [i.e., court of first instance]" (GIAR "for the Year 1922," p. 25). In Khuzestan the *ʿadliya* no longer existed, and the police commissioner took care of simple cases; the situation in Ahvāz remained unchanged in 1923 (GIAR "for the Year 1922," p. 40; idem, "for the Year 1923," p. 62). The court of appeals (*estināf*) of Māzandarān was closed, according to Kasravi, because the leaders of the Ministry of Justice needed the money for their own increased salaries (Kasravi, p. 138).

In Farvardin 1302/April 1923, a law passed concerning the employment of judges and government officials. Because the penal code of common law (*qānun-e jazā-ye ʿorfi*) had been canceled, the courts could not punish anyone. Therefore, the government was authorized by the Majles on 21 June 1923 to

form a panel of twelve knowledgeable people for drafting a law concerning this matter. It was necessary, however, that the bill be presented to, and approved by, the Majles before its term ended, so that the ministry could apply it on a temporary, experimental basis. Perny wrote the new bill, which was practically a copy of the French law. It was translated but came too late, because the term of the fourth Majles had already ended. This text was at the basis for the later general penal code (*qānun-e mojāzāt-e ʿomumi*; Golšāʾiān, I, pp. 66-68). Meanwhile, most people avoided the *ʿadliya* courts, which operated only in a few cities, as they became known for their corruption and inefficiency, and hence were styled by the public as courts of injustice (*ẓolmiya*). The new and lengthy procedures also put people off. In the provinces the new system only slowly made inroads, and thus the governors were often still in charge of the judiciary. Many cases, therefore, possibly more than before, were referred to *mojtaheds*, or the latter would interfere directly in cases (Kasravi, pp. 154-62; Floor, pp. 125-36).

Because of these unresolved issues the quality of the judicial situation in Iran worsened, and, although the government was aware of the situation, it did not know what to do. For example, in Kerman in March 1924, the *ʿadliya* courts were suspended and a separate "department of investigation" was formed by the governor to deal with complaints in the interim period. However, at the end of April 1924, the government in Tehran changed its mind, and orders were given to reopen the *ʿadliya* courts (GIAR "for the Year 1924," p. 34). There was no *ʿadliya* in Ahvāz in 1924, but complaints were now referred to the military governor and not to the police. Many claims were already years old (GIAR "for the Year 1924," p. 48). The situation was not much better in Shiraz. The British consul wrote, "the legal system is more helpless and scandalous than it was when there were only Courts of the greater Mujtahids and the rough and ready methods of the Governor-Generals, twenty years ago. . . . The Adlieh, or Court of Justice of Fars, is condemned on all hands, even by the highest officials like the Governor-General and the Amir Lashkar, for its corruption and chaotic, interminable methods" (GIAR "for the Year 1925," pp. 21, 59). According to Kasravi, the court of appeal of Māzandarān was not corrupt, but the ones in Tabriz and Zanjān, as well as the *ṣolḥ* court in Damāvand were (Kasravi, pp. 128, 134, 140, 151). The corruption was worsened by the fact that there were not enough properly trained judges, and most of those employed as such were incompetent friends of *mojtaheds* or ministers, unfamiliar with the required new and lengthy legal procedures. When cases were then transferred to religious courts, matters only became

worse because of new delays and differences in interpretation of the law (Kasravi, pp. 145, 163; Banani, p. 70). The situation was so bad that in 1926 the press in Shiraz openly attacked the *ʿadliya* for its corruption. Arthur Millspaugh, the administrator general of finances of Iran, refused to allow his employees to be tried by the *ʿadliya* and had his own tribunal in the ministry, which was unconstitutional (GIAR "for the Year 1926," p. 15). Millspaugh wrote, "there is much criticism of the courts for alleged incompetence, corruption, slowness of procedure, and subserviency to political and personal influence. The highest court in the country declared a few months ago that there was no penal law in force" (Millspaugh, pp. 136-37).

(2) Pahlavi Period

With the deposing of the Qajar dynasty and the accession of the prime minister, Reżā Khan, to the throne as Reżā Shah Pahlavi (r. 1925-41), a new era of major social and political changes and reforms was initiated. As the prime minister, he had not been able to reform the judiciary, although there were attempts to that effect. However, now that he had become the king, he could take steps that would bring about the desired changes. The new dynast started an ambitious program of judicial and other reforms, and implemented them with little regard for dissenting voices, whether secular or religious. The new cabinet that came to power after Reżā Shah had taken over the state was geared to start making radical changes.

The Dāvar reforms. One day after the new cabinet took over (20 Bahman 1305/9 February 1926), ʿAli-Akbar Dāvar, the new minister of justice, ordered the abolition of the *ʿadliya* courts. The new regime had two objectives. The first was to revoke the system of capitulation that authorized foreign powers to try their citizens in special consular courts, which were the judicial symbol of foreign interference with Iran's national sovereignty. To make that acceptable, the government had to draft a new legal code and offer it to the foreign powers as a viable alternative. To that end, a Commercial Code (Qānun-e tejārat) had already been adopted on 14 Bahman 1304/3 February 1926. The second objective was to modernize the judicial system with a view to satisfying a public that had been very displeased with the functioning of the *ʿadliya* courts. The government could not undertake the one measure without the other. The only solution was to do away with the *ʿadliya* courts, which were decried by foreigners and Iranians alike, and to start with a totally new judicial system.

On 27 Bahman 1305/ 17 February 1927, Majles enacted Dāvar's emergency bill called "permission for the reform of the laws concerning the principles of the organization, trials, and the employment of the judiciary (*Ejāza-ye eṣlāḥ-e qawānin-e oṣul-e taškilāt wa moḥākamāt wa esteḵdām-e ʿadliya*), in which he explained the reasons for his decision and sought approval for the formulation of a new law. The new rules would be submitted after they had been used on an experimental basis for six months. To achieve these two objectives, the Majles gave Dāvar special authority to modernize and reorganize the Ministry of Justice and its apparatus in any way that he saw fit. Dāvar was under pressure, since he had only four months to implement these various changes before he had to report back to the Majles. He therefore decided to ask for an extension of another four months, which was granted. Dāvar also quickly appointed new officials to the highest judicial functions and had their appointments confirmed in the presence of Reżā Shah personally (Golšāʾiān, I, pp. 134-36; Ṣadr, pp. 288-90; Banani, pp. 70-71).

Adoption of a civil code and a new judiciary. The legal chef d'oeuvre of Dāvar was the Civil Code (*Qānun-e madani*) of 1928, composed of 995 articles. It was an improved version of the temporary law of 1911, and was submitted to Majles on 18 Ordibehešt 1307/8 May 1928. It had to be approved by 20 Ordibehešt, because that was the day the government intended to abolish the capitulations, which provided a major incentive to the deputies. The staff of the Ministry of Foreign Affairs attached to consular courts were transferred to the Ministry of Justice. The new law changed, among other things, the requirement to know *feqh*, which automatically limited the choice of judges to mullahs, for the new law was a codification of the *šarʿ* in the format of the Napoleonic Code. To that end, Dāvar had formed a working group of legal experts who were also very knowledgeable regarding *feqh* (Golšāʾiān, I, pp. 138-39; Ṣadr, pp. 288-90; Bāstāni Pārizi, p. 35).

Once the central judicial administration had been reorganized, a new prison was built (for picture and impressions, see Haliburton), while preliminary steps were taken with regard to the staffing of the newly established provincial judiciary. The whole system was in flux, with both old and new judges all waiting to learn their fate, whether a promotion or demotion, and not much effective work was done during this period. Dāvar also asked the public via the newspapers to inform him whether candidate judges had served in the interest of the country and, working with his personnel department in his own house, vetted each candidate judge before he approved the

appointment (Golšāʾiān, I, pp. 136, 138-39, 144-45). To signal that there truly had been a change, Dāvar also introduced special dress for judicial officials (judges, lawyers, etc.), complete with hat, and a different dress for the prosecutor. These had to be worn when in court, and this dress code remained fundamentally unchanged until the end of the Pahlavi period (Golšāʾiān, I, pp. 148-49).

Slow progress. The British consuls reporting on the judicial reform were unimpressed. In Shiraz in March 1927, the *ʿadliya* courts were closed before alternative arrangements had been made. At least in the beginning, few, if any, substantial changes existed between the new and old judicial systems, save for some minor variance in the number of members connected to the *estināf* and *bedāyat* courts, and a relative increase in procedural efficiency (GIAR "for the Year 1927," p. 21). It took some time for the new judicial system to be in place and, although many of the new judicial staff had been schooled in European theory, this fact did not necessarily mean that they were better judges than the clerical staff they had replaced. Indeed, the new *ʿadliya* chief in Bušehr was as corrupt as the ones who had been there before him, but there was nevertheless a difference: he was dismissed (GIAR "for the Year 1928," p. 3). In Kerman, the consensus was that the *ʿadliya* improved little over the old department, and that corruption remained, if to a somewhat lesser degree (GIAR "for the Year 1928," p. 36). Indeed, the new judicial system continued to suffer from problems similar to those of its predecessor. The higher salaries for judges, for example, were not a real deterrent against corruption, while due to lack of adequately trained staff and funds, many towns went without courts altogether. A case in point is the situation in the southern ports of Bandar ʿAbbās, Bandar Lenga, and Mināb. In Bandar ʿAbbās, there was one *ṣolḥiya* (small-claims) court, but it was discontinued in 1930. In the other ports, there was no court at all to deal with civil and commercial disputes; if parties wanted to take matters to court, they had to go to Bušehr or had to accept forced arbitration, a procedure which was heavily disliked by the mercantile community (GIAR "for the Year 1929," p. 19). This situation did not change for many years. Finally, merchants in these ports took their cases for arbitration to the governor, which was an unsatisfactory stopgap solution (GIAR "for the Year 1930," p. 24). In Kerman, the situation was better, for there was a court of appeals, a court of the first instance, and a small-claims court, and their efficiency had improved over the previous year. Foreigners, however, still preferred out of court settlements whenever possible, as the courts remained extremely slow-paced due to a variety of reasons, paramount among which

was understaffing (GIAR "for the Year 1929," p. 33). To help alleviate the delays and improve the understaffing issues, a *ṣolḥiya* court was added in Kerman, for people always appealed to higher courts in order to gain time in the hope of settling for less, or that the claimant would drop his claim out of frustration (GIAR "for the Year 1932," p. 34). In Bandar ʿAbbās, the court was re-opened in 1932, but not in Bandar Lenga and Mināb, much to the chagrin of merchants and traders (ibid., p. 21).

Nevertheless, there were changes, however slow. Among these was the visit of an inspector from Tehran to Kerman in 1933 to investigate charges of corruption, and several officials were referred to Tehran for trial. Also, a second court of the first instance was opened due to the heavy workload, but the amalgamation of the appeals court of Kerman with that of Khuzestan was discontinued. Nevertheless, the British consul in Kerman opined: "In spite of all this, there has been no noticed improvement in the administration of Justice in the province, and the dilatory methods ruling in the local courts have gone from bad to worse since the transfer of Dawar to the Finance Office" (GIAR "for the Year 1933," p. 36; "for the Year 1934," p. 38; "for the Year 1935," p. 42; "for the Year 1936," p. 28).

Post-Dāvar era: consolidation and modernization (1933-39). While the Ministry of Justice was attempting to implement the judicial reforms in the provinces, which were slow and not without problems, in Tehran itself it continued to bring about changes to improve the regulations concerning the judiciary. The Code of Civil Procedure (Qānun-e Āʾin-e Dādrasi-e Madani of 7 Dey 1307/ 28 December 1928) affirmed jurisdiction of the *šarʿ* courts as roughly the same as in the 1911 law. In 1929, the first book of the civil code was followed by two others, which were approved by the Majles in 1935; and later a final form was adopted on 16 September 1939. This law gave greater powers to lower courts and prosecutors, while it also contained rules for the trial of foreigners. In 1932, a new commercial code was approved. In criminal cases, the punishments still reflected religious law, but in 1928 a new penal code, based on Swiss and Belgian codes, was enacted, which itself was replaced by a new penal code in 1939. The laws governing family and civil cases were basically a codification of religious law. On 25 Šahrivar 1318/16 September 1939, new regulations for judicial procedures came into law and replaced the temporary earlier laws, while in the years 1937-39 laws regulating the practice of lawyers and legal experts, as well as laws concerning bankruptcy cases, were passed (Matindaftari, pp. 15-23).

The new judicial organization that had been created was, like its predecessor, based on a French model. This was to be expected because Iran had employed French legal advisors, and also most of its legal experts had been trained in France or in countries whose judicial systems were based on the French model, or had been trained in Tehran's Faculty of Law by mostly French professors. Thus, all other related laws (Civil Code, The Code of Civil Procedure, Penal Code) also had French laws as their model, and some of their articles were just translations from the French text. This is also clear from the judicial structure and functions created and the terminology used, such as *pārka* (parquet), meaning the public prosecutor's office. It was this system, both the judiciary and the laws, which remained almost unchanged until the end of the Pahlavi period (Banani, pp. 75-75).

As before, the minister of justice, as a member of the Cabinet, was appointed by the Shah with the approval of the Majles. The minister was responsible for the functioning of the Ministry of Justice, based on its powers and scope as laid down in Articles 71-89 of the supplemental to the Constitution, as well as the laws and regulations derived from it.

The new court system consisted of three sections: the Court of Cassation or the Supreme Court, general courts, and special courts (Matindaftari, p. 29).

The Supreme Court. The highest court in the country was the Court of Cassation or the Supreme Court (*Divān-e ʿāli-e tamiz*), which was created by the Judicial Organization Act (*Qānun-e oṣul-e taškilāt*) of 1911. It was later called the High Court of the Country (*Divān-e ʿĀli-e Kešvar*) in the 1928 law. The new Judicial Organization Act (Qānun-e taškilāt-e ʿadliya) of 1928 established that the Supreme Court would have three branches (*šoʿba*s), with each branch having one chief and three counselors; one of the chiefs would take turns as chief of the Supreme Court. It further allowed the transfer of assistant staff (*moʿāwen*) of one branch to another if the relative workloads suggested such a temporary move was warranted. The law of 14 Esfand 1333/5 March 1954 increased the staffing of the branch courts and changed its procedures. This law also laid down rules for the selection of the president of the Supreme Court. To this court was also attached the state prosecutor, a function created in 1910 (Matindaftari, pp. 72-73).

The Supreme Court, among other things: heard cases of conflict between lower courts; verified verdicts of civil courts involving amounts above a certain level (this changed over time); in the case of penal courts, it adjudicated cases

whose punishments were above two-months of imprisonment, criminal case verdicts of military courts (if permitted by the commander-in-chief of the armed forces), and cases of judicial errors. The Supreme Court was the highest penal court, and it would judge, for instance, cases of ministerial misconduct; and it was the highest administrative court that would hear cases of conflict between the Ministry of Justice and other ministries. In 1961, the State Council (*Šurā-ye dawlati*) was created to adjudicate on disputes between the various state organizations and their dependencies (Matindaftari, pp. 67-69).

General courts. General courts were divided into three levels of provincial courts (*Dādgāh-e estināf* [appeals], later *Dādgāh-e ostān* [province]), sub-provincial courts or the courts of first instance (*Dādgāh-e bedāyat*, later *Dādgāh-e šahrestān* [sub-province]), and district courts (*Dādgāh-e ṣolḥiya* [compromise], later *Dādgāh-e baḵš* [district]).

The highest general court was that of the Provincial Court or Court of Appeal. The Supplementary Fundamental Law of October 7, 1907, stipulated that each of the four provinces (Azarbaijan, Khorasan, Fars, and Kerman) should have a provincial Court of Appeal. Each had to be staffed by four judges (called *dādras* since 1936), one of which had to take turn as the investigating magistrate (*ʿożw-e moḥaqqeq*); the other three constituted the court, that is, the court of appeal for the sub-provincial courts or courts of first instance in penal, civil, and commercial matters. Each court had one or more branches (*šoʿba*) depending on the size of the cities. The new Judicial Organization Law of 1928 introduced an important change, in that henceforth the Court of Appeal had only three members, and the function of the investigating magistrate was discontinued, although one of the three judges had to act as the court clerk. Due to a lack of staff and funds, the Code of Penal Procedure (*Oṣul-e moḥākamāt-e jazāʾi*) of 26 Mehr 1311/18 October 1932 (Art. 5) stipulated that the Court of Appeal could only consist of two judges. In cases where they disagreed, a third judge was asked to cast the deciding vote. The members of this court were no longer called *ʿożw-e estināf*, but *mostašār* (counselor) (Matindaftari, pp. 31-33).

The law of 1907 had established a Court of Appeal in Azarbaijan, Khorasan, Fars, and Kerman; later Hamadān, Kermānšāh, Ahvāz, and Isfahan were added, so that there were eight in total. The law of 1927 established a total of ten provinces, thus requiring the establishment of two additional Courts of Appeal. The Code of Civil Procedure (*Qānun-e āʾin-e dādrasi-e madani*) changed the name *estināf* to *dādgāh-e ostān* or provincial court (Art. 18). But not all

provinces yet had a full complement of courts, as only Tehran, Tabriz, Mashad, Isfahan, Shiraz, Kermanshah, Khuzestan, and Kerman had one. After 1941, provincial courts were once again established in Mazandaran and Gilan, where they had been discontinued by the law of 1913 (Matindaftari, pp. 33-34; Ṣadr, pp. 114-19, 236-40, 280-82; Great Britain, p. 399; Kasravi, p. 128).

The next level of the general courts was the sub-provincial court (*dādgāh-e baḵš*) or the court of first instance, which had a civil and penal branch. The civil branch dealt with civil and financial cases up to an amount that changed over time (up to 50,000 rials by 1972). According to the law of 1911, the court of first instance needed to have three judges per chamber. This changed in 1928 in the temporary law on court rules, where only one judge was required. The law of 19 Dey 1316/9 January 1938 established 10 provinces and 49 sub-provincial units, and the Ministry of Justice therefore decided that each sub-province should have at least one sub-provincial court, subject to the availability of funds. Residents of towns and cities without one were required to visit the nearest locale with such a court. The civil branch of the sub-provincial court also tried some political offenses, but “press offences in daily or periodical publications are tried by a criminal court with a special jury of five persons. Otherwise juries are not in regular use” (Great Britain, 1945, p. 400).

The lowest court level was that of the district court (*ṣolḥiya* or *dādgāh-e baḵš*) for small-claims which, in accordance with the law of 1911, were to be established in all cities and district centers. The court consisted of a chief (*amin-e ṣolḥ*) and one *faqih*, called *ḥākem-e ṣolḥ*, for religion-related cases. This court was based in a fixed venue, but if need be, the judge and the parties concerned would visit the place of the event being adjudicated. They operated under the control of the public prosecutor. In view of the many small claims and minor disputes, and given the impossibility of having sub-provincial courts of first instance in all towns, the law of Jawzā 1302/June 1923 gave the district court the deputyship of the sub-provincial court and even, where there was no prosecutor, also the deputyship of prosecution. The reforms introduced by the law of 1928 (*qānun-e taškilāt*) gave the district court further authority to deal with: (1) claims up to 5,000 rials, and if there was no sub-provincial court in that location, up to 10,000 rials; (2) where there was no district court for small-claims, the sub-provincial court was authorized to hear its cases; (3) in cases where the claim was less than 200 rials.

The Ministry of Justice was allowed to establish special district courts for

small-claims. However, the ministry was unable to establish district courts everywhere, and thus a situation arose that led to an undesirable judicial situation, because non-judicial personnel often filled this judicial vacuum. The Majles therefore passed the law of 1940 (*qānun-e maʾmurin-e ṣolḥ*), which permitted the minister to authorize deputy-governors whom he considered competent to act as *amin-e ṣolḥ* for claims up to 5,000 rials. It was also stipulated that a verdict given in a claim of less than 200 rials could not be appealed. However, this did not solve the problem either, as people were not satisfied with this, and, besides, there were not enough district courts to handle all the cases. When the judicial system was evaluated once more in the law of 6 Dey 1315/27 December 1936, the district courts were given special attention. The level of claims was increased to 20,000 rials for cases where there was no sub-provincial court. It also allowed the ministry to create branches of district courts, which were allowed to hear claims up to 20,000 rials, while others would hear claims of 500 rials and less. In case of illness of the *amin-e ṣolḥ*, etc., the nearest district court could hear cases from other jurisdictions. Years later, in the law of 1954, the level of complaint was raised to 50,000 rials, and, if there was no sub-provincial court, even to 100,000 rials. The law also stipulated that the judges of this court needed adequate remuneration at the rate of the level-four judge. The law of 1939 (Art. 342-52) also changed the name of *ṣolḥiya* court to that of district court (*dādgāh-e baḵš*) to express the objective that the government wanted to further the reach of the law to the people who needed justice down to the district level. The law of 1928 (*oṣul-e taškilāt*) had created 290 districts, which the Ministry of Justice considered to be the location for a district court; the number was later expanded to 381. As a result, two or more districts had to share one court. The district courts had two branches, one civil and the other for minor offenses liable to imprisonment from one to eleven days. The verdicts in the civil branch were final, while those of the minor affairs branch could be appealed (Matindaftari, pp. 37-41; Great Britain, p. 399).

The special courts. In addition to the common civil court there were also the special courts, including religious courts, commercial courts, financial courts, arbitration courts, disciplinary courts of government employees, and military courts.

Religious courts (maḥāżer-e šarʿi or maḥākem-e šarʿ).). These traditional courts were considered in the law of 1911 to be a part of the judiciary system, which foresaw their establishment within the various courts. The same law also

allowed the parties concerned to submit their case to a religious authority (*mojtahed*) for an opinion, whose verdict was considered to be as valid as that of the a state court. Each religious court (*maḥżar* or *maḥkama*) consisted of a fully qualified (*jāmeʿ-al-šarāʾeṭ*) *mojtahed* plus two assistants who were on the path towards qualification (*qarib-al-ejtehād*). The same law also stipulated the establishment of a *ḥākem-e ṣolḥ* (a *faqih*, not necessarily at the high level of *ejtehād*) to take care of small-claims cases in the religious field, and another court consisting of the judges of the *šarʿ* and *ṣolḥ* courts to deal with (1) complicated issues; (2) complaints about verdicts or religious judges; (3) religious matters of which the verdict of the religious judge was doubtful; (4) appointment of a replacement in case of resignation, death, or dismissal. The religious court dealt with cases that the court of the first instance referred to it. The temporary law of 1911 (Art. 145) considered religious cases to be those that are defined by religious law, which was not very precise. In practice it meant cases of civil law, in particular marriage and divorce, commercial law (bankruptcy), and property issues (endowments and testaments). If a mistake had been made in deciding whether a case had to be dealt with by religious or customary law, the mutual consent of both parties was required to reach a judgement. If this was not possible, then the case was referred to the religious court. The law of 1911 defined three types of complaints: (1) religious, (2) customary, and (3) common. The first two cases were clear-cut, but in the third, by mutual consent, the *ʿadliya* court would hear the case. These common cases were clarified by the law of Jawzā 1302/June 1923, which also limited the jurisdiction of religious courts. In 1922, secular courts had already acquired appellate jurisdiction over religious courts. The reform law of Dey 1307/December 1928 limited the jurisdiction of religious courts to: (1) the validity of the original documents of marriage and divorce (*ṣeḥḥat-e aṣl-e ezdevāj o ṭalāq*); (2) claims that required oath taking as evidence; (3) cases that required the appointment of a guardian or caretaker. Furthermore, the law of 1310/1931 (Art. 9-16) abrogated all previous laws concerning religious courts, and only allowed those presided by a fully qualified *mojtahed* at locations determined by the Ministry of Justice. Thus the religious courts became powerless, because all documents had to be processed in the secular court system, and matters of guardianship were totally referred to the sub-provincial court by the law of 2 Dey 1319/23 December 1940, while the law of Ḵordād 1316/June 1937 required that all marriages and divorces should be registered by the civil authority. Thus there existed only one religious court based in Tehran, which had some branches in some provinces. There also was a so-called court of revision, which existed only in Tehran and dealt

exclusively with matters of the validity of the original documents of marriage and divorce.

Commercial court. The Provisional Code of Commercial Courts (*Qānun-e movaqqati-e maḥākem-e tejārat*) of 1915 (total 62 Arts.) established commercial state courts, both at the *ṣolḥiya* for small claims and *ebtedāʾi* for first instance levels, at locations where they would be needed, given their volume of trade. Its judicial staff would be selected from among the ministry's staff. Later this was changed to selection by secret ballot from among merchants themselves, who would serve pro bono for two years. The law of 14 Bahman 1304/3 February 1926 assigned the selection of one of the members of the commercial court to the Ministry of Justice, while merchants could continue to select the other members. In reaction to merchants' complaints about forced arbitration, the law of 1928 changed this and made it optional. In 1930 (law of 3 Tir 1309/24 June), the commercial courts were abolished, and commercial claims henceforth fell under the jurisdiction of the civil courts. This law was superseded by the law of 1939, which drew up new rules with regard to commercial cases (Matindaftari, pp. 52-56).

Arbitration court. The temporary law of the judicial organization of 1911 also created the arbitration court (*dādgāh-e dāvari*), to which parties could have recourse in case of mutual consent. The arbiters had to give their binding view, which should not be contrary to the laws, within a fixed period on a circumscribed subject as agreed by the parties. However, if one of the parties disagreed, because the parameters of the case had not been respected, the courts might hear the case. The law of 29 Esfand 1306/20 March 1927 refined and clarified the rules governing arbitration. It allowed also appealing a verdict in case of forced arbitration, while the law of Tir 1307/July 1928 broadened the concept of arbitration (including the part concerning settlement). Because there had been problems in execution, in particular with forced arbitration, the law of Bahman 1313/February 1935 abolished that practice, while the civil code of 1939 addressed the other problems raised. It recognized two types of arbitration: (1) by mutual consent and (2) if the parties had contractually agreed beforehand to seek arbitration in case conflicts arose. The law also established forced arbitration in case of conflict between husband and wife and between property owner and renter (Matindaftari, pp. 57-58, 76-81).

Financial, disciplinary, and military court. Finally, there were some special courts such as the finance tribunals of the Ministry of Finance (*divān-e*

moḥākamāt-e māliya), which was in charge of settling all financial disputes of the government, mostly concerning government farmlands that had been transferred to private individuals (*ḵāleṣa-ye enteqāli*). Furthermore, there was the *divān-e kayfar* or government employee criminal court, composed of one judge. It was located in Tehran and had three branches. There also was a judge's disciplinary tribunal (*dādgāh-e enteẓāmi-e qożāt*), which dealt with offenses committed by judges and also looked into judgements issued by the lawyers' disciplinary court. Special boards could also be established to settle disputes between civil servants and ministers concerning their rights and status. In addition, there was the military court (*dādgāh-e neẓāmi*), created by the law of 1911, which dealt with crimes committed by members of the military as well as all political cases involving members of subversive groups and parties and those endangering the integrity and security of the country (Matindaftari, p. 57; Great Britain, p. 400; Mostawfi, III, pp. 476-79).

Qualification and appointment of a judge. The law of 1911 stipulated that the members of the Supreme Court, the judges of the court of appeal, and the chiefs of the court of first instance had to be nominated by imperial decree at the proposition of the minister of justice. The other judges were appointed by ministerial order. The appointments of the public prosecutors of the Supreme Court and the court of appeal were subject to agreement by the religious judge (*ḥākem-e šarʿ*). All candidates had to be Iranian citizens and Muslim, and between twenty-five and forty years of age, depending on the rank. Before the establishment of the law school, candidates had to pass an examination before they could be sworn in. In June 1922, there were demonstrations against the draft of the penal code of common law (*qānun-e jazā-ye ʿorfi*), because it stipulated that only those who had passed the examination of the law school could join the judiciary. The result was that the law was canceled. In the final text that passed the judiciary committee on 21 Saraṭān 1301/ 12 July 1922, the condition of the examination was still there, but an article was had been inserted stating that those employed prior to the date of the law did not have to pass it, which basically grandfathered all the traditionally *madrasa*-trained judicial staff (about the actual examination and the kind of people who participated, see Kasravi, pp. 146-48). This article was inserted at the request of the ulema, who until that time owned the judiciary. A similar article also exempted the students of the school of political science. As a result, the two schools (political science and law schools) were merged in the so-called Faculty of Law, Political Science, and Economics (*Dāneshkada-ye ḥoquq o ʿolum-e siāsi o eqteṣādi*). The French teachers slowly left the law school, and the

French government withdrew the equivalency of the diplomas acquired in Tehran and Paris. The law of 12 July 1922 also established the content of the examination and the members of the examination committee. Subjects included Persian literature, Arabic literature, *feqh*, and the laws of the land. After having passed the examination, the candidate was allowed to serve without payment on a trial basis. The law exempted those who had a law school diploma (Golšā'iān, I, p. 66; Matindafari, pp. 102-3).

Article 7 of the law on the principles of the organization of the judiciary and the employment of judges (*qānun-e oṣul-e taškilāt-e ʿadliya wa esteḵdām-e qożāt*) distinguished seven levels for judges. When Dāvar introduced his reforms in 1927, he also made changes as to the qualifications of judges, but that was not enough. Therefore more changes were made in 1939 (law of 28 Esfand 1318/19 March 1939). However, demand for judges outpaced supply, and thus these qualifications were adjusted to qualify more candidates (law of 9 Mordād 1319/31 July 1940). The law of 6 Dey 1315/27 December 1936 aimed to resolve these problems. It recognized two types of candidates: one, those with a law school diploma, and the second, those who did not (former judges, paralegals, etc.), but who, after training and an examination, may be considered as qualified. Law school graduates had to be at least twenty-five years of age. Those younger could only be employed as a substitute in the lower courts. The second group could also be engaged after having passed a special examination, but could rise only to grade level six in the system that had eleven ranks instead of the previous seven. Starting in 1936, special training courses were offered at the Ministry of Justice for this second group of candidates. This measure appears to have helped satisfy demand to some extent, for the law of 14 Esfand 1333/4 March 1955 stipulated that only those with a diploma from law school were eligible for the judgeship (Matindafari, pp. 33, 103-8). However, there was still a shortage of judges, for the effective number of judges (1,400) was lower than indicated in the Table 1 (1,638), according to the minister of justice in the early 1960s, who also stated that he needed at least another 1,000 judges to be able to deal with cases speedily and to reduce existing backlogs (*Iran Almanac*, 1965, p. 115). Moreover, there was an imbalance between the number of judicial staff in Tehran and the rest of the country. For example, in 1965 there were 850 judges in Tehran and 875 in the rest of the country (*Iran Almanac*, 1966, p. 140). For statistics regarding the number of judges and lawyers during the 1950s, see Table 1.

Table 1
DISTRIBUTION OF JUDGES AND LAWYERS (1953-58)

Judicial Staff	1953-54	1958-59
Judges	930	1,536
Lawyers	633	843

Source: Iran Almanac, 1963, p. 118.

Qualifications of a lawyer. The law of 1911 established, for the first time, the functions of a lawyer in Iran. There had been persons prior to that time, known as *wakil*s, who represented defendants in religious courts, but they did not necessarily possess any judicial knowledge or training (Kasravi, p. 155, give a very negative picture of them). The law of 1911 recognized two types of lawyers: those who practiced law as their profession and were called *wakil-e rasmi*, and others who did so only occasionally. Those of the first category had to be Iranian, at least thirty years of age, of good conduct, not in the employ of the government, and had to pass a special examination in the Ministry of Justice. The law of 1928 allowed only professional lawyers to represent clients in a court of law, while it further established remuneration rules for lawyers. Because there was a shortage of lawyers, the law of 1930 stipulated that district or sub-provincial courts could authorize certain competent persons to act as lawyers, but only in the court that had given such permission. The law of 1936 acknowledged three grades (*pāya*) of lawyers. First-grade lawyers could appear in any court, second-grade lawyers in provincial, sub-provincial, and district courts, and those of the third grade only in sub-provincial and district courts. This was done in order to prevent all lawyers from remaining in Tehran and to encourage some to settle in other cities and smaller towns. The law of 1935 introduced fourth and fifth grades of lawyers, who were permitted to act in cases of small claims and disputes. To create a unifying spirit, the examinations were standardized, and official dress became obligatory at court appearances, while the Ministry of Justice encouraged the creation of a bar association (*kānun-e wokalā-ye dādgostari*). Additional laws laid down rules and procedures governing the exercise of the function of lawyers (Matindaftari, pp. 164-74).

Quality, staffing, and budget constraints of the judiciary. Despite the progress made, personnel and budgetary constraints continued to hamper the reach and effectiveness of the judiciary. The quality of justice left much to be desired and was influenced by political, financial, and social factors, and cases of corruption were not rare. Also, the legal process was very slow, while courts in rural areas were absent, which, in addition to high court costs, put legal suits out of the reach of the poor. In 1977, there were 400 sub-provincial courts of the first instance (*ebtedāʾi*), and 52 provincial courts of appeal (*estināf*), while

the Supreme Court (*Divān-e ʿāli-e kešvar*) had 12 chambers, employing a total of 1,366 judges. But even these numbers were not enough.

Table 2
CASES FILED AND SETTLED IN COURTS (1953-75)

Year	Cases Filed	Cases Settled
1953-54	316	301
1960-61	850	829
1974-75	1,630	1,680

Source: Ministry of Justice, cited by Iran Almanac, 1963, p. 119; idem, 1976, p. 97.

Houses of equity (ḵānahā-ye enṣāf). To solve the problem of the shortage of sub-provincial and district courts, houses of equity were established as part of the Shah's program (ninth point) for the White Revolution (*enqelāb-e safid*), to bring a simple, fast, and cheap method of dispensing justice to rural areas. In accordance with the Houses of Equity Act (*Qānun-e ḵānahā-ye enṣāf*) of 8 May 1965, each house of equity had five justices of peace elected from among the reputable members of the community, who served for three years pro bono and applied customary law. When the justices, who often included the village chief and other notables, were illiterate, the local literacy corpsmen (*sepāh-e dāneš*) served as court clerk. Only simple matters were dealt with; more complicated cases were referred to the district court. In March 1969, the 1965 law was amended. The minister of justice was authorized to establish circuit courts of equity where he deemed necessary. The jurisdiction of the circuit court of equity was to deal with (1) claims up to 10,000 rials; (2) moveable property claims up to 50,000, if both parties agreed; (3) family cases regarding alimony, maintenance of wife and children, and the like; and (4) cases concerning trespassing and unlawful occupation and disturbance of the peace. Cases of ownership of property had to be referred to higher courts. In 1977 there were a total of 9,888 of these houses of equity, covering 16,500 villages, which settled, over the course of their existence, some 1.4 million cases. It is difficult to assess how accurate these statistics are, and how effective the houses of equity were. The few village or regional studies provide some data on the workings of the houses of equity, but no evaluation of the quality of justice rendered therein (Djirsarai, pp. 149-50; Bazin, p. 89; Planck, pp. 65-68).

Table 3
HOUSES OF EQUITY BY CASES SETTLED

Year	No. of Houses	Cases settled
1964-65	234	1,055
1967-68	1,070	42,699

1974-75	8,600	610,000

Source: Ministry of Justice, cited by Iran Almanac, 1976, pp. 97-98.

The government in 1969 further established the so-called arbitration councils in cities, which were modeled after the houses of equity, allegedly because of the latter's success. Its five honorary judges were also elected from among locals for three years, and women could also participate. It basically dealt with small claims from 20,000 to 50,000 rials, depending on the type of claim. They operated under the supervision of the Ministry of Justice, which attached a judge or attorney to them.

To speed up the courts' handling of cases, the Ministry of Justice introduced certain aspects of Anglo-Saxon judicial tradition into Iran's judiciary in 1976. Despite all these efforts to improve the reach and functioning of the judiciary, under-funding and overloading of the system continued to hamper its performance (*Iran Almanac*, 1972, pp. 126-29; idem, 1976, pp. 97-98; Mozafari, pp. 119-38; Smith, pp. 258-61, 566; Wilson, pp. 218-51; Walpole, pp. 290-93, 591-92).

(3) Post-Revolution Period

After the Revolution of 1979 and the establishment of the Islamic Republic of Iran, the new Constitution (see CONSTITUTION OF THE ISLAMIC REPUBLIC), promulgated on 3 December 1979 (with amendments adopted on 28 July 1989), formed the new basis for the judiciary in Iran. As a result, the entire judicial system of the country was Islamicized, because Article 4 states that all laws and regulations should be based on Islamic principles. However, until 11 August 1982, when Ayatollah Khomeini forbade this, judges still applied pre-revolution laws and regulations. He ordered judges to use their knowledge of Islamic law in cases where no new Islamic laws had as yet been formulated, thus giving them great discretionary powers. By that time, already hundreds of new laws based on Shiʿite Islamic law had been adopted, including a new civil and criminal code. For example, the law of retribution (*qeṣāṣ*) provides that in cases of victims of violent crime, families may demand retribution, including death. Other laws established penalties for various moral offenses, such as consumption of alcohol, failure to observe the veil (*ḥejāb*; see ČĀDOR), adultery, prostitution, and illicit sexual relations. Punishments prescribed in these laws included public flogging, amputation, and public execution by stoning for adulterers, and hanging in other cases (Lawyers Committee, p. 6).

Head of the judiciary (raʾis-e qowwa-ye qażāʾiya). Article 156 of the new

Constitution provides for an independent judiciary. This is seemingly even reinforced by Article 170, which stipulates that judges are "to refrain from executing government decisions that are contrary to Islamic law or are beyond the authority of the executive power." The head of the judiciary is appointed by the supreme leader, who in turn appoints the head of the Supreme Court and the chief public prosecutor (*dādestān-e koll*; Arts. 157-58, 162). The highest judicial office is the High Judicial Council (*Šurā-ye ʿāli-e qażāʾi*; Lawyers Committee, pp. 16-17), which consists of five members, who serve a five-year, renewable term. The High Judicial Council consists of the chief justice of the Supreme Court, the chief public prosecutor, both of whom must be Shiʿite *mojtahed*s, and three other clergy chosen by religious jurists. The responsibilities of the head of the judiciary include establishing appropriate departments within the Ministry of Justice to deal with civil and criminal offenses, preparing draft bills related to the judiciary, and the appointment, promotion, and dismissal of judges. Article 161 stipulates that the minister of justice is to be chosen by the president from among candidates who have been recommended by the head of the judiciary. Formally, the minister of justice is responsible for all courts throughout the country and is accountable to the executive and the legislature powers, but actually he functions as a liaison between the judiciary and the Majles.

Courts. The highest judicial authority in the country is the Supreme Court. It reviews decisions of the lower courts (military court and the major judgements of the common and revolutionary courts) to ensure their conformity with the laws of the country and uniformity in judicial policy (Art. 161). It is also competent to investigate miscarriages committed by the president in discharging his duties. In 2008, it had 33 branches, of which all but two (in Mashad) are based in Tehran. The Supreme Court further includes the state general prosecutor's office (*Dādestān-e koll-e kešvar*).

Investigations of all civil, criminal, and non-litigious cases are within the jurisdiction of the common or civil courts. Establishment of such courts in each judicial district, the extent of the area of each district, and the number of the court branches must be approved by the head of the judicial power. The extent of the jurisdiction of such courts is comprehensive and general, except for the cases that fall under the jurisdiction of the revolutionary courts. The investigations of matters which, pursuant to the laws, have been assigned to other authorities, are out of the jurisdiction of the common and the revolutionary courts. The common courts are functionally classified according

to their area of jurisdiction, civil or criminal, and according to the seriousness of the crime or the litigation, for instance, the value of property under dispute or the level of punitive action involved. There are four civil courts: first level civil courts, second level civil courts, independent civil courts, and special civil courts. The special courts attend to matters related to family laws and have jurisdiction over marriage, divorce and child custody.

In accordance with the law of 28 August 1982, criminal courts fall into two categories: first and second level criminal courts. Courts of the first level have jurisdiction over prosecution for felony charges (offenses punishable by death or mutilation, 10 years imprisonment, and fines of a minimum of 200,000 *toman*s or 40 percent of the offender's property), while the second-level courts try all other cases that involve lighter punitive action. The first-level court is presided over by one judge, with a second judge as advisor. The second-level courts have only one judge. In 1988, and confirmed on June 21 1989 by the law of the formation of criminal courts, parliament made appeals possible if the verdict is based on procedural error, invalid documentation, or false testimony. Verdicts in the second-level courts can be appealed in the first-level courts, whose own verdicts may be appealed to the Supreme Court. To avoid a backlog, the law of 28 June 1989 allowed judges from civil courts, or qualified individuals selected by the head of the judiciary, to act temporarily as judges in the criminal courts. Such ad-hoc judges have been appointed, for example, after disturbances for which a great many people required punishment. However, the rulings of these judges were sometimes not in accordance with the laws of the Islamic Republic (Lawyers Committee, pp. 18-19, 23-24, 30-31).

The Islamic revolutionary tribunals (Dādgāh-e enqelāb-e eslāmi). These are special criminal courts that were established by the decree of the Revolutionary Council (*Šurā-ye enqelāb*) on 17 June 1979. They were initially created to investigate crimes by supporters of the Pahlavi regime and to deal with other "enemies" of the Revolution. The court's current jurisdiction, after emendation in 1983, is in all cases concerning (1) the internal and external security of the country, and behavior in a corrupt manner on earth (*fesād fi'l-arż*); (2) slander against the founder of the Islamic Republic of Iran and the leader; (3) conspiracy against the Islamic Republic of Iran or carrying arms, and terrorism; (4) engaging in espionage for foreign entities; (5) crimes involving smuggling and narcotic; and (6) offenses pertinent to Article 49 of the Constitution (Lawyers Committee, pp. 32-34). The revolutionary courts are formally under the High Judicial Council (*Šurā-ye ʿāli-e qażā'i*). The

formalization by law of these courts also implied the recognition of its religious judges as being qualified, although they did not satisfy the qualification mentioned in the relevant laws. The revolutionary courts have been criticized for their arbitrary conduct, irregular, summary, and heavy-handed procedures, and denial of defendants' legal rights, such as consultation with a defense counsel. In 1992, President ʿAli-Akbar Hāšemi Rafsanjāni, therefore, spoke of the need to restore confidence in the courts, which had been lost due to hasty judgements in the past (Lawyers Committee, p. 33). However, the criticism of these courts has not abated since that time.

Appeals and special courts. The judgements of the common courts and the revolutionary courts are final, except those that are subject to cassation or revision. As of 1988, the law of the penal courts also applies to the revolutionary courts, which means that their verdicts can be appealed. The Supreme Court is the court of appeal for heavy punishments such as the death penalty, amputation, retribution, confiscation of property and release of the same, imprisonment over ten years, as well for the judgements pertinent to parentage, endowments, marriage, divorce, and the judgements in which the amount of remedy exceeds 20 million rials. The provincial (*ostān*) court is the court of appeal for all other cases. The leader (*rahbar*) is the ultimate source of appeal (Art. 161). To enforce judgements delivered by the common courts, civil and penal, the Unit of Enforcement of Judgements has been established.

The court of administrative justice (*Divān-e ʿadālat-e edāri*) was established in 1982 under the supervision of the head of the judicial power to hear the complaints, grievances, and objections of the people against government offices, officials, organs, and regulations (Art. 173 of the Constitution). There are also special courts for members of the security forces. The Special Clerical Court (*Dādgāh-e viža-ye ruḥāniyat*) in 1987, which is outside the court system and overseen directly by the leader, deals with crimes committed by members of the clergy and, more specifically, "ideological offenses." Such offenses include interpretations of religious precepts that are not acceptable to the establishment clergy and activities, such as journalism, outside the realm of religion. Appeals are heard by another chamber of the clerical court, whose ruling is final and against which there is no appeal. The Supreme Court has no jurisdiction to review these cases.

Judges. Only men who are "faithful to the system of the Islamic Republic of Iran," and who have received approved training in religious law, are eligible to become judges. As a result, all female judges were dismissed or given a

clerical function within the Ministry of Justice after the Revolution. Those judges deemed lacking commitment to the regime of the Islamic Republic were fired. Since there were insufficient numbers of qualified senior clergy to fill the judicial positions in the country, some former civil court judges who demonstrated their expertise in Islamic law and were willing to undergo religious training were permitted to retain their posts. Nevertheless, the Islamization of the judiciary forced half of the former civil court judges out of their positions. To address the shortfall in judges, a special religious law school was established in Qom in 1980 to train qualified judges to replace the secular judges, while the government also appointed theological seminarians who had completed their studies as judges (about 2,000 in all by 1989; Lawyers Committee, pp. 17-18). In fact, the law of qualifications for the appointment of judges, which does not detail what the qualifications for a judge are, stipulates that for the revolutionary courts only students from religious seminaries should be appointed as judge (Lawyers Committee, pp. 17-18). The result was that a significant part of the judiciary consisted of inexperienced and not highly qualified students. Because of the lack of judges, the Majles passed a law that approved the appointment of paralegals, if they had a high school diploma or were approved by the High Judicial Council, and had passed an examination as to their knowledge of civil procedures and the Islamic penal code. This meant that the monopoly of the seminaries was broken and that political and religious activists with little education and training could also become judges (Lawyers Committee, pp. 18-19).

According to the Constitution (Art. 164), judges can only be removed from office or transferred to another place if their guilt is proven in a court of law, unless it is in the interest of society and decided by the head of the judiciary after consultation with the chief of the Supreme Court and the chief public prosecutor (*Dādestān-e koll*). As these interests are not defined in any law, it opens the door to arbitrary decisions on the part of the authorities if they wish to remove a judge. Although the judges' disciplinary tribunal (*dādgāh-e enteẓāmi-e qożāt*) of the Pahlavi period still exists, its authority is overriden by the High Judicial Council and the High Tribunal for Judicial Discipline. In short, judges have no real objective standard to evaluate their performance or to have a third party evaluate it (Lawyers Committee, p. 21).

Individual powerful *mojtahed*s who are not part of the judiciary may intervene in the judicial process and bypass established rules and procedures, thus adding to the arbitrariness of the judiciary and the uncertainty that

citizens feel about respect for their rights. In fact, some duly appointed judges ignore the laws approved by the Majles and give a verdict based on religious law, exercising their privilege as *mojtahed*. As a result, the local judiciary is often heavily influenced by the local religious power elite, who consider themselves as yet another of many arbiters of what constitutes "Islamic principles" and the "interests of the society" (Lawyers Committee, pp. 23-26, 33-35).

The office of public prosecutor was divided between a revolutionary and a civil prosecutor until 1984, when they were merged. There is also a military prosecutor, who deals with offenses committed by members of the armed forces.

Lawyers. Many lawyers left Iran after the Revolution or were disbarred by the authorities of the new regime, for political and/or religious reasons. There are two classes of lawyers, first and second ranks (*pāya*). Only the first-rank lawyers can appear before the Supreme Court. All lawyers need to be members of the Bar Association, be an Iranian citizen, at least twenty-five years old, of good conduct, have completed law school, having passed the bar examination and having served for one year under the supervision of an experienced lawyer. Despite this formal legal position, lawyers have been discouraged from appearing in court and have been harassed and pressured. Besides, the state authorities allow persons without any legal qualification to represent defendants, since this is allowed by the *šariʿa* (Lawyers Committee, pp. 43-44, quoting UN reports, February 1990, para. 221, and January 1992, para. 152).

The Constitution (Art. 35) recognizes the right to have an attorney in every lawsuit, a right that the Expediency Council (*Šurā-ye tašḵiṣ-e maṣlaḥat-e neẓām*) explicitly confirmed in 1991. Hence, in cases where either party to a lawsuit has been prevented from using the services of an attorney, the court's judgement is legally invalid. Failure to observe this rule results in a trial by the Judges' disciplinary court and dismissal from the judicial position. The Constitution (Art. 165) requires all court proceedings to be public unless the court determines that an open trial would be detrimental to public morality or public order, or in case of private disputes, if both parties request that open hearings not be held. As a result, court proceedings often are not public, in particular those of the revolutionary courts and appeals cases.

Conclusion. There is much criticism with regards to the courts' objectivity,

independence, corruption, and violation of human rights. Although the Constitution provides for an independent judiciary, in practice the judicial branch is influenced strongly by political and religious institutions. Defendants have the right to public trial, choice of a lawyer, and appeal, but these rights are often ignored. Judicial authority is concentrated in the judge, who also acts as prosecutor and investigator with no legal counsel. In the early 2000s, reformers tried unsuccessfully to gain parliamentary approval for the introduction of jury trials. The revolutionary courts have authority to hold suspects for long pre-trial periods without the benefit of counsel. Charges are often vague, such as “anti-state activity” or “warring against God,” and lawyers have complained of being harassed and even imprisoned by the authorities to prevent them from carrying out their duty (Amnesty International, 2001; Lawyers Committee, 1993, pp. 44-45; United Nations, 2002 report).

BIBLIOGRAPHY

Amnesty International. *Iran, A Legal System That Fails to Protect Freedom of Expression and Association*, AI Index, MDE 13/045/2001, December 21, 2001.

Bāqer Āqeli, *Dāvar wa ʿadliya*, Tehran, 1990.

Amin Banani, *The Modernization of Iran 1921-1940*, Stanford, 1961.

Moḥammad-Ebrāhim Bāstāni Pārizi, *Moḥiṭ-e siāsi wa zendagāni-e Mošir-al-Dawla (Ḥasan Pirniā)*, Tehran, 1962.

Marcel Bazin, *La vie rurale dans la région de Qom (Iran Central)*, Paris, 1970.

Edward G. Browne, *The Persian Revolution of 1905-1909*, London, 1966, pp. 353-400.

A. A. Daftary, *Geschichte und System des iranischen Strafrechts, nebst einer übersetzung des iranischen Strafgesetzbuch*, Halle, 1935.

Ali Ahmad Djirsarai, *Das Dorf Ahar (Iran): Die Bevölkerungs-, Sozial- und Wirtschaftsgeographische Struktur und Entwicklung*, Bonn, 1970.

Willem Floor, "Changes and Developments in the Judicial System of Qajar Iran (1800-1925)," in Clifford E. Bosworth and Carole Hillenbrand, eds., *Qajar Iran: Political, Social and Cultural Change*, Edinburgh, 1983, pp. 113-47.

Moḥammad-ʿAli Foruḡi, "Tāriḵča-ye ḥoquq," *Taʿlim o tarbiat* 6/10, 1936, pp. 717-34.

ʿAbbāsqoli Golšāʾiān, *Goḏaštahā wa andišahā-ye zendagi yā ḵāṭerāt-e man*, 2 vols., Tehran, 1998.

Great Britain, Naval Intelligence Division, *Persia*, Geographical Handbook Series, Oxford, 1945, pp. 399-400.

GIAR (Government of India, "Administration Report of the Persian Gulf Political Residency for the Year . . .") in *The Persian Gulf Administration Reports: 1873-1947*, 10 vols., n.p., Archive Editions, 1986, vols. 8 and 9.

Abu'l-Qāsem Ḥabaši, *Qażāwat dar Irān*, Tehran, 1973.

Richard Halliburton, *The Flying Carpet*, London, 1934.

Eric James Hooglund, *Land and Revolution in Iran*, 1960-1980, Austin, 1982.

Moḥammad-Jaʿfar Jaʿfari Langarudi, *Dāneš-nāma-ye ḥoquqi: dāʾerat al-maʿāref-e qawānin wa moqarrarāt-e dādrasi-e madani . . .* , 2 vols., Tehran, 1964-66.

M. Kār, ed., *Qānun-e ḥemāyat-e ḵānvāda*, Tehran, 1968.

Aḥmad Kasravi, *Zendegāni-e man yā dah sāl dar ʿadliya* Tehran, 1944.

Mošfeq Kāẓemi, *Ruzgār wa andišahā*, 3 vols., Tehran, 1971.

Lawyers Committee for Human Rights, *The Justice System of the Islamic Republic of Iran*, May, 1993.

Ḥosayn Maḥbubi Ardakāni, *Tāriḵ-e Moʾassasāt-e jadid-e tamaddoni dar Irān*, 3 vols., Tehran. 1975-89, I, pp. 399-405.

Majmuʿa-ye qawānin-e marbuṭ be ṣalāḥiyat dar omur-e ḥoquqi, Tehran, 1967.

Aḥmad Matindaftari, *Āʾin-e dādrasi-e madani wa bāzargāni*, 2 vols., Tehran, 2002.

Arthur Chester Millspaugh, *The American Task in Persia,* New York, 1925.

ʿAbd-Allāh Mostawfi, *Šarḥ-e zendagāni-e man yā tāriḵ-e ejtemāʿi wa edāri-e dawra-ye Qājār*, 3 vols., Tehran, 1963.

>Mehdi Mozafari, *L'Iran*, Paris, 1978.

Moḥsen Ṣadr, *Ḵāṭerāt-e Ṣadr-al-Ašrāf*, Tehran, 1985.

Ulrich Planck, *Iranische Dörfer nach der Bodenreform: Sozialorganisation und Sozialökanomik*, Opladen, 1974.

ʿAli-Pāšā Ṣāleḥ, "Qowwa-ye moqannena wa qowwa-ye qażāʾiya," in ʿAli-Aṣḡar Ḥekmat, ed. *Irānšahr*, 2 vols., Tehran, 1963-65, II, pp. 956-1013.

Harvey Henry Smith et al., *Area Handbook for Iran*, 2nd ed., Washington, D.C., 1971.

United Nations, *Final Report of the Special Representative on the Situation of Human Rights in the Islamic Republic of Iran*, E/CN. 4/1993/41 E/CN. 4/2002/42.

Idem, *Report of the Special Representative on the Situation of Human Rights in the Islamic Republic of Iran* A/49/514.

U.S. Government, Department of State. *Iran Human Rights Reports*, 1996-2001.

Norman C. Walpole et al., *U.S. Army Handbook for Iran*, Washington, D.C., 1963.

Arnold Talbot Wilson, *Persia*, London, 1932.