

Implications of Twelver Shí'ih Mihdísm on Religious Tolerance: The Case of the Bahá'í Minority in the Islamic Republic of Iran

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All religion, as theologians — and their opponents — understand the word, is something other than what it is assumed to be.

Religion is a vehicle. Its expressions, rituals, moral and other teachings are designed to cause certain elevating effects, at a certain time, upon certain communities.

... religion was instituted as a means of approaching truth. The means always became, for the shallow, the end, and the vehicle became the idol.

Only the man of wisdom, not the man of faith or intellect, can cause the vehicle to move again.

Faríd'ul-dín Attár, Súfí from Nishápúr (circa 13th century)

I. Introduction

The situation of the Bahá'í religious minority in the Islamic Republic of Iran represents a significant challenge for the task of creating a more tolerant Islamic theology in accordance with international human rights standards. From its inception in 1844, the Shí'ih Muslim clerics of Iran have discredited the Bahá'í Faith as a "heresy" and attempted successively to extirpate it from the land of its birth. In effect, the Bahá'ís of Iran have been victims of a genocidal campaign sanctioned by the contrivances of Islamic theologians; a campaign which remains

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unabated to this day despite the fact that the Bahá'í Faith has become recognized as a widespread and independent world religion.²

In order to justify these policies among Iranian people and to counter criticism in international fora, there have been repeated allegations by the Iranian authorities that the Bahá'ís are persecuted not because of their religious beliefs, but rather, because they are agents of an "imperialist-zionist" conspiracy aimed at the destruction of the Islamic régime. However, it is evident to most impartial observers that the Bahá'ís have not engaged in partisan political or subversive activities and that their persecution is a clear example of attempted genocide against a "scapegoat" group.³

What is less evident and acknowledged is the purely religious character of the persecution of Bahá'ís, inspired by the serious theological challenge their existence poses to the Shí'ih Islamic State in which recognition of a religious minority carries profound Constitutional implications. Unlike other religious minorities in the Islamic Republic of Iran, the Bahá'ís associate their faith with the fulfillment of Shí'ih and other messianic expectations the acceptance of which would, in effect, terminate the theological-Constitutional basis of the present State and the dominating role of the Shí'ih clergy. Since they are entrusted with absolute doctrinal authority — including the recognition and legitimization of religious minorities — the repression and extermination of the Bahá'í minority represents a basic act of self-preservation for the Shí'ih clerics.

It is widely accepted by the international community that the persecution of the Bahá'ís in Iran is a gross and flagrant contravention of basic international human rights norms. Nevertheless, the theoretical

² According to the *1988 Britannica Book of the Year*: "over 14 major religious systems are each now found in over 80 countries. Christianity, Islam, and the Bahá'í World Faith are the most global...": at p. 303.

³ According to Leo Kuper, a leading scholar in the field of genocide, the most recent examples of a threatened genocide against a scapegoat group is the campaign of the Iranian Government against members of the Bahá'í religious minority: "Its members are ranked with the American Satan and with the imperialists generally as scapegoats for the woes of the present régime. But the Bahá'ís have always been traditional scapegoats in Iranian society from the earliest origins of the Bahá'í faith in the mid-nineteenth century." L. Kuper, *The Prevention of Genocide*, (New Haven: Yale University Press, 1985), p. 152.

dilemma stems from the position of the Iranian government that in the event of a conflict, the "divine" law of Sharf'a prevails over "secular" human rights standards.⁴

Taking this position into consideration, the focus of the present inquiry is to illustrate the human rights implications for the Bahá'í religious minority of the application of Islamic law, and to determine whether alternative interpretations of the Sharf'a can reconcile discrepancies with Iran's obligations under international law⁵ concerning

⁴ The following report to the Human Rights Committee exemplifies the juridical implications of this theological premise: "...[the representative of Iran] stressed that the criteria for determining the validity of any law would be the values given by God and transmitted to earth, that since human traits were considered to be in harmony with revealed values, values derived from human civilization and from reason were held to be close to Islamic values, and that *whenever divine law conflicted with man-made law, divine law would prevail*": *Report of the Human Rights Committee*, 37 U.N. GAOR Supp. (No. 40) 66-72, U.N. Doc. A/37/40 (1982); (emphasis added).

Another example is the statement made by Mr. Rajá'i-Khorássáni, Iranian delegate to the 1983 session of the 3rd Committee of the United Nations General Assembly: "The Universal Declaration of Human Rights, which represented secular understanding of the Judaeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognized by the Islamic Republic of Iran; *his country would therefore not hesitate to violate its provisions, since it had to choose between violating the divine law of the country and violating secular conventions*": U.N. Doc. A/C.3/39/SR.65, paras. 91, 92, and 95; (emphasis added).

This "Islamic" position may be contrasted with the standard Western approach towards human rights contained in, for example: Paul D. Allen, "The Baha'is of Iran: A Proposal for Enforcement of International Human Rights Standards", 20 *Cornell International Law Journal* 338, No. 2 (Summer 1987).

⁵ It should be noted that according to international law, certain norms are characterized as *jus cogens* or "peremptory norms" from which no derogation is permitted by any State, irrespective of any treaty obligations to the contrary. Such norms impose on States obligations *erga omnes* or "owed to the international community as a whole." According to the majority judgement of the International Court of Justice in the *Barcelona Traction, Light and Power Co. case* (Second Phase), such norms are derived: "... in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination." [1970] I.C.J. Rep. 3; at p. 32. It may be assumed that the principle of racial non-discrimination also applies to religious non-discrimination. The resolution of conflicts between Islamic law and peremptory norms of international law, especially as it may relate to genocide and religious non-discrimination, has

religious non-discrimination, the protection of minorities and the universal enjoyment of fundamental human rights. In particular, a doctrine of tolerance for such religious groups may be based on the fact that in the Shí'ih eschatological tradition, the messianic Mihdí or Twelfth Imám has absolute superiority over the ulamá (religious clerics) in theological questions. Therefore, it is beyond the powers of the ulamá to pronounce on the legitimacy of such messianic claims and the only viable alternative is respect for the freedom of conscience and religious belief of those who choose to be members of such a religious group.

II. The Nature of Twelver Shí'ih Mihdísm

Because of the central doctrine of *Khátamu-n-nabíyín*⁶ (Seal of the Prophets), the common view among orthodox Muslims is that Islam does not accept the possibility of divine revelation after the Qur'án.⁷ Both Sunní and Shí'ih traditions, however, are characterized by messianic expectations. They both anticipate an apocalyptic redeemer with a divine mandate commonly referred to as the Mihdí (The One Who is

far-reaching implications on the viability of the contemporary international human rights régime.

⁶ The Qur'án 33:40 asserts that: "Muhammad is not the father of any of your men, but the messenger of God, and the Seal of the Prophets; God has knowledge of everything." This oft-quoted verse is the basis for the doctrine of "special prophethood" implying the end of all revelation through Muhammad and the eternal validity of the Qur'án. Islam, however, is in some measure based on the concept of prophetic continuity or the progressive revelation of divine truth. Therefore, the ahl al-kitáb (People of the Book) are considered as legitimate religious minorities because they are recipients of divine guidance from the succession of "the messengers who possessed constancy": Qur'án 46:34.

⁷ According to An-Na'im: "The Baha'is claim to be adherents of an independent religion and specifically state that they are not a sect of Islam. Iranian authorities reject this claim, because Islam does not accept the possibility of revelation after the Qur'an. The Baha'i faith cannot therefore qualify as an independent religion according to Shari'a. The Baha'is of Iran have been subjected to severe persecution since the founding of their faith during the nineteenth century": Abdullahi Ahmed An-Na'im, "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives", 3 *Harvard Human Rights Journal* 13 (Spring 1990), at p. 25, note 50 (emphasis added).

Rightly Guided). Because of the chief doctrine of the Imámate, the Mihdístic theme is central to Shí'ih theology.⁸ This is particularly the case with Twelver Shí'ih Islam — the State religion of the Islamic Republic of Iran — the whole of which is bound with messianic expectations.

A central component of Twelver Shí'ih eschatology is anticipation (Intizár) of the advent (Zuhúr) of the Qá'im (He Who Shall Arise)⁹ shortly before the Day of Judgement. According to the popular version of this Shí'ih tradition,¹⁰ the Qá'im is the Hidden Twelfth Imám who, in the fullness of time, will come out of His period of Occultation (Qaiba)¹¹ and resume His Mission as Amír al-Mu'minín (Commander

⁸ It should be noted that there are three main sects in Shí'ih Islam: the Zaydis, the Isma'ilis, and the Ithná-Ashariyyih or Twelver Shí'ih. The common feature distinguishing them from the Sunnis is their belief that after the death of Muhammad, Caliph Abú-Bakr usurped the authority of Alí who they claim was the lawful successor of the Prophet. They reject the institution of the Caliphate in favour of the Imámate, although Alí was Caliph from 656 until His murder in 661. The subject of the present inquiry is Twelver Shí'ihism which is distinguished from the other Shí'ih groups by the belief in the succession of all twelve Imáms after Muhammad and the anticipation of the appearance of the Twelfth or Hidden Imám (thus its appellation as Twelver Shí'ihism). The Muslims of Iran are predominantly Twelver Shí'ih. A comprehensive overview of Twelver Shí'ism is provided in: Moojan Momen, *An Introduction to Shí'í Islam, The History and Doctrines of Twelver Shí'ism*, (Oxford: George Ronald, 1985).

⁹ The specific term is Qá'im-i-Ali-Muhammad which refers to He who shall arise from the family of Muhammad.

¹⁰ It should be noted that although this is the popular version, there are contradictory accounts of this tradition and considerable differences in their interpretation.

¹¹ The twin doctrines of the Lesser and Greater Occultation are associated with the period of absence of the Twelfth Imám Muhammad ibn Hasan al-Askarí from His followers beginning at the age of eight, in the year 260 A.H. corresponding to 873–874 A.D. Because of the bitter persecution of the Imáms by the Abassid dynasty, it is reported that the Twelfth Imám went into hiding and communicated with His followers through four successive agents known to the Shí'ih variously as the Báb (Gate), the Safír (Ambassador) or Ná'ib (Deputy). This period is referred to as the Lesser Occultation. After the death of the last agent of the Imám in 329 A.H. corresponding to 941 A.D., the Shí'ih entered into the Greater Occultation which refers to the period in which the Twelfth Imám resides in the mythical cities of Jábulqá and Jábulsá, concealed by God until His reappearance. It appears that with the termination of the Lesser Occultation, the Twelfth Imám came to be identified with the figure of the Mihdí.

of the Faithful). He and a Company of His Chosen Ones, will redress the injustice which has been inflicted on the House of Muhammad¹² through an apocalyptic battle against His enemies. The forces of righteousness shall prevail over the forces of evil and the Imám shall then establish a reign of justice in the world. After a period of rule by the Twelfth Imám, the Second Coming of Christ and the return (Raj'a) of the Imáms, prophets and saints shall occur. Shortly after, the Day of Resurrection (Qiyáma) shall transpire and after the return of the dead (Ma'ád), all shall be judged according to their loyalty to God and Islam. After this celestial encounter, the redeemed will eternally live in Paradise and the sinner punished in Hell.

The Qá'im is otherwise known as Sáhib al-Zamán (Lord of the Age) because during the Greater Occultation He is still considered as the sovereign Amír al-Mu'mínín. There is, however, no direct route of communication with Him and He has left no specific instructions concerning succession to leadership and the organization of the Shí'ih community during His absence.¹³ This raised considerable problems for Shí'ih theology because the Imám was not only a spiritual sovereign with infallible doctrinal authority, but also a political sovereign. The political sovereignty of the Imám, however, was principally theoretical since the Shí'ih were constantly persecuted by the ruling dynasties and only Alí briefly reigned as Caliph from 656 A.D. until His murder in 661. The spiritual sovereignty of the Imám thus, continued to be recognized while His political sovereignty was only a theoretical issue among the persecuted Shí'ih.

With the emergence of the first Shí'ih State in the 16th century, however, considerable tensions arose between the theoretical consequences of the Greater Occultation and the practical exercise of political power. Because of the Shí'ih belief that the Twelfth Imám continued to be the Lord of the Age, there could be no legitimate assumption of His powers. Nevertheless, in their political struggles, the ruling dynasties and the ulamá both arrogated many of the functions

¹² Referring to the alleged usurpation of authority by the Caliph Abú-Bakr.

¹³ The Sixth Imám Jafar al-Sádiq did, however, delegate some of His authority to the ulamá and insisted that when disagreement existed concerning a particular issue, that it be submitted to the judgement and consensus (ijmá) of the community.

of the Hidden Imám to themselves although they both claimed to reign only as Trustees during His absence. This became a major source of political tension and it came to characterize political developments in Iran after the emergence of the Shí'ih Sáfávid dynasty in 1501 until the overthrow of the Pahlavi dynasty in 1979.

Towards the beginning of the twentieth century, the ulamá became particularly active in the movement to restrain the powers of the Sháh. This movement created divisions among the Shí'ih élite because of their differing views on the issue of democratic reforms as it related to the interpretation of Shí'ih Islam. The Usuli movement — which emerged during the Qájár period — developed the doctrine that the leading mujtahids (highest rank of Shí'ih ulamá) have the authority to interpret Shí'ih Islam pending the reappearance of the Twelfth Imám. Although this doctrine did not confer infallibility (isma) to the ulamá, it gave them the right to ijtihád (independent juristic reasoning) in order to be responsive to the needs of the people. It did not empower the people directly through community consensus (ijmá) and consultation (shúrá) as a means of decision-making. In practice, the Usuli movement created an Islamic élite who could operate independent of the will of the people.

Another current of thought — reformist in nature — emerged under the leadership of Ayatu'lláh Muhammad Husayn Ná'íní. This movement campaigned for democracy on the basis of the right to ijtihád which they claimed called for the free exchange of ideas for the purpose of furthering the welfare of the community. It was even asserted that Shí'ih Islam required democratic constitutional rule and thus, the 1906 Constitution was supported by an influential element of the ulamá.¹⁴ The reformist movement was renewed in the 1960s under the leadership of progressive ulamá¹⁵ who emphasized an egalitarian interpretation of the right to ijtihád by arguing that "the Imáms' supernatural qualities ... are said to be indicative, not of their ... superiority over other Muslims, but merely their worthiness of higher

¹⁴ See: Hamid Enayat, *Modern Islamic Political Thought*, (Austin: University of Texas, 1982), p. 170.

¹⁵ The leading members of this movement were Ayatu'lláh Murtadá Mutahharí, Ayatu'lláh Táliqani and Dr. Alí Sharí'atí.

station in the hereafter", and that "in the sensible world, all the faithful are equal."¹⁶ The reformist movement, nevertheless, failed to have significant impact on the popular thought of the Iranian people and democratic ideals continued to be identified by many as "Western ideas" which are not "indigenous" to Islam. Khomeyni's populist ideas emphasizing political unity and the elitism of the Shí'ih ulamá ultimately prevailed. Thus, with the establishment of the Islamic Republic of Iran in 1979, the ulamá became the sole Trustees of the Twelfth Imám and an authoritarian Islamic State began to take form.¹⁷

The ulamá assumed State power based on the premise that the Qá'im has delegated His authority to the leading mujtahids among the ulamá until His advent. This doctrine was so central and indispensable to the legitimacy of political rule by the Shí'ih ulamá, that it was explicitly contained in the Constitution of the Islamic Republic of Iran. In the words of principle 5:

During the absence of the Glorious Lord of the Age, [Sáhib al-Zamán] may God grant Him relief, He will be represented in the Islamic Republic of Iran as religious leader and Imám of the people by an honest, virtuous, well-informed, courageous, efficient administrator and religious jurist, enjoying the confidence of the majority of the people as a leader. Should there be no jurist endowed with such qualifications, enjoying the confidence of the majority of the people, His role will be undertaken by a leader or council of leaders....¹⁸

This provision of the Constitution provides the theoretical foundation for the fundamental principles of viláyat-i-faqh (rule of the jurist) and marja'-i taqlíd¹⁹ (rule of the leading mujtahid) which were attributed to the Ayatu'lláh Imám Khomeyni. The consequences of the messianic idea of the Qá'im's advent and the belief that all authority is ultimately

¹⁶ Hamid Enayat, *Modern Islamic Political Thought*, p. 46.

¹⁷ For a useful overview of the Shí'ih reformist movement see: Marvin Zonis and Daniel Brumberg, "Interpreting Islam: Human Rights in the Islamic Republic of Iran", in Heshmat Moayyad (ed.), *The Bahá'í Faith and Islam*, (Ottawa: Association for Bahá'í Studies, 1990), pp. 129-133.

¹⁸ Emphasis added.

¹⁹ Literally, "example to be imitated."

illegitimate until His return, has been interpreted by scholars in different and contradictory ways. It has been maintained on the one hand, that the fatalism associated with the anticipation of the Twelfth Imám induces an attitude of submission to despotic political authority.²⁰ On the other hand, it has been argued that the return of the Twelfth Imám requires of the Shí'ih to work towards the establishment of a just society in preparation for the Day of Judgement.²¹

Notwithstanding the sociological consequences of the Shí'ih messianic idea, the Constitutional issues associated with the process by which the Qá'im is identified have not been appropriately addressed. Since the ulamá have in effect, arrogated absolute doctrinal authority to themselves, they may exercise unlimited discretion in determining whether a Miḥdīstic claimant is valid or not. This apparently creates a theological and constitutional dilemma for the ulamá. On the one hand, the Qá'im is accorded absolute doctrinal authority while on the other, the ulamá assume absolute doctrinal authority in identifying Him. Furthermore, conferring legitimacy on an individual or religious minority with Miḥdīstic claims is tantamount to a termination of the Trusteeship of the Imám and by extension, the ulamá's own rule. Thus, despite the strong messianic expectations of Shí'ih Islam, the clerics have opposed Miḥdīstic claims without exception. This theological and theocratic dilemma has profound implications on religious tolerance in Shí'ih Islam and it has been at the root of attempts to destroy the Bahá'í community in Iran.

²⁰ According to one source, the Shí'ih complex of persecution and the rituals associated with the martyrdom of the Imáms constitute: "a powerful ally for despotism ... by fostering an attitude of mind which derives greater satisfaction from oppressedness' than from defying established authority."; Hamid Enayat, *Modern Islamic Political Thought*, p. 30. According to An-Na'im also, anticipation of the Twelfth Imám is an obstacle for Islamic reform since it is necessary "to wait for the reappearance of the absent imam of the Twelvers ... to hear what he has to say on the reform of Shari'a."; Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, (Syracuse: Syracuse University Press, 1990), p. 31.

²¹ See for example: Hamid Algar, "The Oppositional Role of the Ulamá in the Twentieth Century Iran", p. 232.

III. Historical Overview of the Bábi and Bahá'í Faiths in Iran

In the nineteenth century, strong messianic expectations gave rise to various messianic movements and Mihdístic claims. The Shaykhí²² was one of these messianic movements which taught that the Resurrection and other signs accompanying the coming of the Qá'im were allegorical in nature alluding to events with spiritual meaning rather than physical occurrences. They also believed that the Advent of the Qá'im was imminent. Before his death in 1843, the leader of the Shaykhís sent his disciples throughout Persia and Arabia in search of the "Promised One".

On May 23rd, 1844, a merchant from the city of Shíraz by the name of Siyyid Alí-Muhammad, who assumed the title of the Báb (Gate of God), declared himself to be the Qá'im or "Promised One of Islam" to a Shaykhí disciple. At first, it appeared that He claimed to be the Gate to the Hidden Imám. Accordingly, some of His followers maintained the Sharí'a. In 1848, however, He proclaimed explicitly that the Mission of His Dispensation was to abrogate the Sharí'a and to act as a Gate for Man-Yuzhiruhu'lláh (Him Whom God Shall Make Manifest) referring to a Greater Prophet or "Promised One of All Ages" whose advent was imminent.²³ Moreover, the Báb denounced the prevailing corruption among the ulamá and propagated social ideals such as the equitable distribution of wealth and the emancipation of women.

The Bábi movement spread rapidly in Iran and its revolutionary doctrines inflamed the Shí'ih clergy who, along with the forces of Muhammad Sháh and from 1848, Násiri'd-Dín Sháh, resolved to eliminate the Bábi Faith.²⁴ For them, the claims of the Báb were not only

²² The Shaykhís were followers of the Arab Shaykh Ahmad-i-Ahsá'í (1743-1826) and his successor Siyyid Kázim-i-Rashtí; see: Henri Corbin, *En Islam iranien; aspects spirituels et philosophiques*, Vol. 4, and Vahíd Ra'fatí, *The Development of Shaykhí Thought in Shí'í Islam* (unpublished Ph.D. dissertation, UCLA, 1979).

²³ The Shaykhí leader Siyyid Kázim also foretold the coming of the Qayyúm (the Self-Subsisting): "Verily I say, after the Qá'im the Qayyúm will be made manifest. For when the star of the Former has set, the sun of the beauty of Husayn will rise and illuminate the whole world": Nabíl-i-A'zam, *Dawn Breakers: Nabíl's Narrative of the Early Days of the Bahá'í Revelation*, (Wilmette, Illinois: Bahá'í Publishing Trust, 1962) pp. 41-42.

heretical, but also a threat to the doctrine of the Seal of the Prophets which constituted the foundation of Islam. They imprisoned the Báb and subjected thousands of His followers to brutal persecution and massacres. On 9 July 1850, the Báb was executed by a firing squad in the barracks square of Tabriz. The Bábi community was further thrown into disarray when two misguided Bábis made an attempt on the life of Násiri'd-Dín Sháh in 1852.

In 1863, Mīrzá Husayn-'Alí, a Persian nobleman who assumed the title of Bahá'u'lláh (Glory of God) and who had been recognized as the spiritual leader of the besieged Bábi community-in-exile in Baghdád, declared Himself as the "Promised One of All Ages" foretold by the Báb. The majority of Bábis accepted His claim and the followers of this new religious Dispensation became known as Bahá'ís. As the influence of Bahá'u'lláh spread, the Persian government persuaded the Ottoman Sultán Abdu'l-Azíz to banish Him further to Constantinople and soon afterwards, to Adrianople. In 1868, He was banished to the notorious prison-city of Akká in the Ottoman province of Syria. During His banishment, Bahá'u'lláh proclaimed His Mission to the kings and rulers of the world. He called on them to establish a commonwealth of nations as a foundation for the eventual unification of all peoples in a "New World Order" based on the principle of the oneness of humankind, equality and justice. Moreover, He organized the affairs of the Bahá'í community on a democratic basis and established the foundation for a Bahá'í World Administrative Order. He passed away in the vicinity of Akká in 1892.

The persecution of Bahá'ís in Iran remained unabated under the rule of the Qájár and Pahlavi dynasties.²⁵ The ulamá labelled them variously as heretics or agents of British and Russian imperialism. During the political struggles of late nineteenth century Persia, the Bahá'ís were persecuted by both the constitutionalist and monarchist factions, in part because of the leading role of the ulamá in both of these movements.²⁶

Even the so-called liberal Constitution of 1906 denied any form of recognition to the Bahá'ís and assured the persistence of discrimination against them as juridical "non-persons". The overthrow of the Qájár dynasty in 1925 did not ameliorate their situation either. Indeed, the persecution of the Bahá'í community continued to be a common cause for the State and the ulamá and a useful distraction from sensitive issues in the period of monarchist rule up to the overthrow of the Pahlavi dynasty in the Islamic Revolution of 1979.

²⁴ Lord Curzon of Britain wrote extensively about Persia and the Bábi Faith in the 19th century. His testimony demonstrates the popularity of the Bábi Faith and the nature of the threat which it posed for the Shí'ih religious establishment. According to him, in the few years after the declaration of the Báb, a very significant proportion of the Iranian Population joined the movement: "The lowest estimate places the present number of Bábis in Persia at half a million. I am disposed to think, from conversations with persons well qualified to judge, that the total is nearer one million." He observes furthermore, that: "They are to be found in every walk of life, from the ministers and nobles of the Court to the scavenger or the groom, not the least arena of their activity being the Musulmán priesthood itself." George N. Curzon, *Persia and the Persian Question*, (London: Longmans, Green, and Co., 1892), Vol. I, p. 499.

²⁵ The Qájár dynasty ruled from 1795 until its overthrow in 1925 with the advent of the Pahlavi dynasty which ruled until the Islamic revolution in 1978–79. For a concise overview of persecution during Qájár and Pahlavi rule see: Douglas Martin, *The Persecution of the Bahá'ís of Iran, 1844–1984*, (Ottawa: Association for Bahá'í Studies, 1984), pp. 11–29.

²⁶ Even Shí'ih scholars hostile to the Bahá'í Faith acknowledge that during this period, the Bahá'ís: "came to occupy something of a position between the State and ulama, not one enabling them to balance the two sides, but rather exposing them to blows which each side aimed at the other. The government, interested in maintaining order, would resist the persecution of the Bahá'ís by the ulama, but would equally, when occasion demanded, permit action against the Bahá'ís." Hamid Algar, *Religion and State in Iran: 1785–1906*, (Berkeley: University of California Press, 1969) p. 151.

With the advent of the revolution, there was a recrudescence of the genocidal pogroms against Bahá'ís reminiscent of the nineteenth century. From the very inception of the Islamic Republic, members of the so-called "wayward Bahá'í sect" were subject to discriminatory treatment and persecutions.²⁷ According to a United Nations report, the policy of the Iranian government *vis-à-vis* the Bahá'í community amounted to genocide.²⁸ Primarily because of world opinion and

²⁷ The Islamic leadership expressed its hostile attitude towards the Bahá'í Faith even before the collapse of the Pahlavi régime. This was evident in the interview given by Ayatu'lláh Khumayní to Professor James Cockroft of Rutgers University in December 1978. The text of this interview was published in the February 23, 1979 issue of *Seven Days*, pp. 19–20, the relevant part of which reads as follows:

Question: "Will there be either religious or political freedom for the Bahá'ís under an Islamic government?"

Answer: "They are a political faction; they are harmful. They will not be accepted."

Question: "How about their freedom of religion — religious practice?"

Answer: "No."

The implications of this policy became clear when, as early as 1981, Ayatu'lláh Sadduqí declared Bahá'ís to be *mahdur ad-damm* (those whose blood may be shed with impunity), supposedly on the basis of Qur'anic law.

For an impartial and detailed description of the treatment of the Bahá'ís since 1979, see: *Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr. Reynaldo Galindo Pohl, pursuant to Commission resolution 1990/79, U.N. Doc. E/CN.4/1991/35*, (paras. 265–327, pp. 52–60). For other reliably attested examples illustrating the savage nature of the persecution against the Bahá'ís, see also: Douglas Martin, *The Persecution of the Bahá'ís of Iran, 1844–1984*, p. 54. The following popular books provide a useful although personal description of the ordeal of Iranian Bahá'ís: Christine Hakim, *Les bahá'ís: victoire sur la violence*; Geoffrey Nash, *Iran's Secret Pogrom*; William Sears, *A Cry from the Heart*.

²⁸ The *Revised and updated report on the question of the prevention and punishment of the crime of genocide prepared by Mr. B. Whitaker*, (E/CN.4/Sub.2/1985/6 and Corr. 1) lists "the contemporary Iranian killings of Bahá'ís" as an example of genocide: (para. 24, pp. 9–10). The *Convention on the Prevention and Punishment of the Crime of Genocide* defines genocide as enumerated acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such....": January 12, 1951, 78 U.N.T.S. 277, article II.

According to Leo Kuper: "The persecution recalls the early stages in the German genocide against the Jews. ... But in contrast to the Jewish victims of the German genocide, the evil decree [of death] may be averted by a recantation of faith and conversion to Islam. Most Bahá'ís elect martyrdom." Leo Kuper, *The Prevention of Genocide*, p. 152.

diplomatic pressures exerted by the international community,²⁹ the present situation of the Bahá'ís has somewhat improved. However, because of their historical vulnerability and since they are still considered as "unprotected infidels" who are "outside the protective precinct of the law...",³⁰ their position remains highly precarious.

IV. State and Religion in the Constitution of the Islamic Republic of Iran: The Question of Recognition of the Bahá'í Religious Minority

Although the ulamá have attempted to depict it as a heresy,³¹ the Bahá'í Faith is not — in proper terms — a sect of Islam.³² It is widely recog-

²⁹ These pressures included several resolutions adopted by the United Nations' General Assembly, Commission on Human Rights and Sub-Commission on Prevention of Discrimination and Protection of Minorities, condemning the persecution of the Bahá'ís in Iran. The forty-eighth session of the Commission on Human Rights adopted a resolution on the "Situation of human rights in the Islamic Republic of Iran" in which it took note of the "discriminatory treatment of certain groups of citizens for reason of their religious beliefs, notably the Bahá'ís": (U.N. Doc. E/CN.4/1992/L.24, 25 February 1992, at p. 3). The forty-seventh session of the General Assembly, furthermore, specifically expressed its concern at "the treatment of the Bahá'í community" and called upon the Islamic Republic of Iran to ensure respect for the fundamental human rights of all religious groups under its jurisdiction. (UN Doc. A/C.3/47/L.76, 2 December 1992, at p. 2).

³⁰ See: *Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr. Reynaldo Galindo Pohl, pursuant to Commission resolution 1990/79*, U.N. Doc. E/CN.4/1991/35, para. 265, p. 52.

³¹ The following comments and observations were received from the Government of the Islamic Republic of Iran and reprinted in the *Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr. Reynaldo Galindo Pohl, pursuant to Commission resolution 1990/79*: "Muslim Ulamas have declared Baha'ism as heresy": U.N. Doc. E/CN.4/1991/35, para. 459(o), p. 89.

³² The relationship of the Bahá'í Faith to Islam may be compared with the relationship of Christianity to Judaism. Therefore, the distinction between Islam and the Bahá'í Faith may be explained as follows: "The Bahá'í Faith, according to its own interpretation, does not aim to be a reform or a restoration of Islam, but rather claims its origin in a new act of God, in a new outpouring of the divine spirit and in a new divine covenant. The foundation of belief and of law is the new divine word

nized as an independent religious world community.³³ Moreover, the Bahá'ís constitute the largest religious minority in Iran.³⁴ The Bahá'í Faith, however, is not — nor has it ever been — recognized by the Iranian authorities as a legitimate religious minority with constitutional or legislative protection. This juridical exclusion and the corresponding administrative practice, is legitimized on the basis of a particular interpretation of Shí'ih Islam which is in conflict with the internationally recognized principle of the freedom of thought, conscience and religion as well as the right of minority groups to profess and practice their own religion; principles which constitute the most elementary norms of international human rights law, as contained in the International Covenant on Civil and Political Rights.³⁵

revealed by Bahá'u'lláh. This is why the Bahá'í is not a Muslim": Udo Schaefer, "The Bahá'í Faith and Islam", in *The Light Shineth in Darkness: Five Studies in Revelation after Christ*, (Oxford: George Ronald, 1977), pp. 113-132, at p. 114.

Eminent Shí'ih scholars also accept the view that the Bahá'í Faith is not a sect of Islam: "... the Bábí and Bahá'í sects ... should not in any sense be considered as branches of Shí'ism": Allámah Siyyid Muhammad Husayn Tabátábá'í, *Shi'ite Islam*, p. 76.

³³ The Bahá'í International Community for example, is a recognized non-governmental organization in consultative status with the United Nations. It represents approximately six million members from 2,000 different ethnic groups across the world.

³⁴ According to a Minority Rights Group Report: "The Bahá'ís are the largest religious minority in Iran; estimates of their numbers vary between 150,000 and 300,000.": see Roger Cooper, *The Bahá'ís of Iran*, (London: Minority Rights Group, 1982-1991), p. 1 (of the September 1991 Update insert).

³⁵ The *International Covenant on Civil and Political Rights*, adopted Dec. 19, 1966; entered into force Mar. 23, 1976: G.A. Res. 2200 (XXI), 21 U.N., GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966); provides for these rights in articles 18 and 27 respectively:

Article 18:

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

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Principle 1 of the Iranian Constitution states that "the Government of Iran is an Islamic Republic." Principle 12 further specifies that "the Official religion of Iran is Islam, and the sect followed is Twelver Shī'ism." Although the doctrine of separation of State and religion is not observed by the Constitution, it is not sufficient to deduce that religious tolerance is not observed. In other words: "It cannot be assumed that the mere fact of separation of State and religion ensures non-discrimination and that the existence of a State religion or the need for formal recognition necessarily gives rise to discrimination."³⁶

The Constitution of the Islamic Republic of Iran contains general provisions on the equal enjoyment of rights, freedom of conscience, and on the prohibition of discrimination against minority groups. However, the general provision on the enjoyment by all persons of

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 27:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

³⁶ *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*, prepared by Francesco Capotorti (Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities), United Nations publication, Sales No.E.91.XIV.2; para. 389, p. 68. The complex relationship between State and religion is explained by another United Nations study as follows: "...Within the framework of this principle of separation [of State and religion]... *de facto* pre-eminence is sometimes achieved by a particular religion and the law of the country — although equally applicable to everyone — reflects in certain important matters the concepts of the predominant group. ...Even if a State maintains strict neutrality as between various faiths, inequality of treatment is not necessarily excluded. The demands of various religions are different, and a law prohibiting certain acts, or enjoining the performance of others, may prevent one religious group from performing an essential rite or from following a basic observance, but be of no importance at all to another group." : *Study of Discrimination in the Matter of Religious Rights and Practices*, prepared by Arcot Krishnaswami (Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities), United Nations publication, Sales No.60.XIV.2, pp. 47–48.

equal rights is qualified on the basis of "Islamic precepts"³⁷ and the provisions on freedom of conscience are arbitrarily disregarded in practice. The provision on minority protection furthermore, applies only to racial, ethnic and linguistic groups and not to religious minorities as such.³⁸ Finally, these rights are all given vague extra-constitutional qualifications by principle 4 which stipulates that "Islamic rules and standards" — as defined by the ulamá and the leading mujtahids — are "absolutely ... dominant over all of the principles of the Constitution." In any event, such general provisions only constitute an implicit recognition of religious minorities and as such, are insufficient for ensuring their protection.

Religious minorities are explicitly recognized in principle 13 of the Constitution of the Islamic Republic of Iran which provides that: "Iranian Zoroastrians, Jews and Christians are the *only* recognized minorities, who within the limits of the law, are free to perform their religious rites and ceremonies."³⁹ Non-recognition of the Bahá'í Faith at the constitutional level is not a contravention of the principle of religious tolerance in itself, although it may arguably be discriminatory. However, the stipulation that "only" enumerated religious minorities may enjoy juridical recognition and by implication, that the Bahá'í minority does not enjoy any constitutional or other protection, is clearly in contravention of international standards on the protection of minorities.⁴⁰ The existence of a religious minority — or any other minority group for that matter — is a question of fact and not of law.⁴¹

³⁷ Principle 20 reads: "All persons, whether men or women, shall be equal under the protection of the law and shall enjoy all human, political, economic, social, and cultural rights with due observance of the Islamic precepts."

³⁸ Principle 19 reads: "The people of Iran belonging to whatever ethnic or tribal group shall enjoy equal rights and the complexion, race, language and the like shall not be considered as a privilege."

³⁹ Emphasis added.

⁴⁰ The implications of non-recognition are very serious. For example, Siyyid Moussavi-Tabrizí, Attorney-General of the Islamic Republic of Iran, explicitly justified a policy of exclusion and of genocide on the basis of the Islamic régime's interpretation of Qur'anic precepts as embodied in principle 13 of the Constitution: "The Qur'an recognizes only the People of the Book [i.e. Muslims, Christians, Jews, and by special dispensation of the ulamá, Zoroastrians] as religious

In the Islamic Republic of Iran, furthermore, recognition is a fundamental prerequisite for the enjoyment of all other rights by the minority group in question. For example, principle 26 restricts the freedom of association by stipulating that only "recognized minority religious associations" are free to operate, and even then places vague restrictions for the exercise of these rights on the basis of "Islamic standards."

The juridical position of the Bahá'í community is further undermined by principle 14 which ostensibly promotes religious tolerance. It provides that:

According to the Qur'an, the Islamic Republic of Iran and the Muslims as well are bound to treat non-Muslims with good moral conduct and Islamic justice and to observe their fundamental rights. *This principle will be applicable to those who do not get involved in anti-Islamic activities and in conspiracies hatched against the Islamic Republic of Iran.*⁴²

Of course, the leading mujtahids among the ulamá have arbitrarily determined that the Bahá'ís are the embodiment of such "anti-Islamic activities and conspiracies."⁴³

These discriminatory and exclusionary juridical provisions and measures can be explained by the fact that the "recognition" of the Bahá'í Faith under the existing Constitution may ultimately have the effect of nullifying the rule of the ulamá. This can be deduced by the

communities. Others are pagans. *Pagans must be eliminated.*" (emphasis added): "Iran Plans a Final Solution," *Sunday Times*, London, September 20, 1981.

⁴¹ See: *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*, prepared by Francesco Capotorti (Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities), para. 570, pp. 96-97.

⁴² Emphasis added.

⁴³ The following comments and observations were received from the Government of the Islamic Republic of Iran and reprinted in the *Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr. Reynaldo Galindo Pohl, pursuant to Commission resolution 1990/79*: "The centre of Baha'ism is located in Israel and is under the direct control of Zionism. Baha'is are enjoying the same rights as any other citizen in the Islamic Republic of Iran and no one is persecuted for being a Baha'i." U.N. Doc. E/CN.4/1991/35, para. 459(o), p. 89.

fact that the rule of the *ulamá* in the Islamic Republic is legitimized on the basis of the doctrine of vicarious sovereignty in the absence of the Twelfth Imám. Since the Bahá'í Faith is associated with Mīhā́istic claims, its recognition would confer legitimacy on its claims and thus, according to the Constitution (i.e. principle 5), the leading political and spiritual role of the *ulamá* would become redundant.

This dilemma stems primarily from the fact that the *ulamá* have been entrusted with the task of determining the validity of all religions seeking official status on the basis of their interpretation of the Sharf'a. In the Iranian theocratic State, there is no neutral set of rights for the protection of religious minorities as such but rather, *ad hoc* constitutional recognition which is supposedly consistent with "Islamic rules and standards." The simple recognition of a religious group may have profound theological consequences for the State, especially in the case of a religion which makes Mīhā́istic claims. In the absence of a neutral set of rights therefore, non-recognition of such a religion by the *ulamá* is an obvious act of self-preservation. Indeed, the categorization of the Bahá'í Faith as heresy or paganism appears to be part of a calculated historic response by the *ulamá* aimed at perpetuating their privileged status and position in Iranian society.

V. Conclusion: The Limits of the Ulamá's Doctrinal Authority

It is evident from the foregoing that the strict application of the Sharf'a may have grave implications on the fundamental human rights of the Bahá'í religious minority in the Islamic Republic of Iran. Other than systematic discrimination and religious intolerance, these implications also include genocide. It is conceivable that Islamic law may be interpreted such that religious tolerance may be observed. The problem, however, is more with those who arrogate to themselves the absolute right to interpret and apply Islamic law rather than Islamic law itself. In the case of messianic religious movements, the apparent theological dilemma and the conflicting self-interest of the *ulamá* in its interpre-

tation are such that they must divest themselves or be divested of the authority to make definitive pronouncements on the legitimacy of religious minorities.

Of course, any structural reform or differing interpretation of Islamic law must be based on respect for the right of all peoples to self-determination, which in the case of Islamic peoples, may include the establishment of some form of an Islamic State. An Islamic State *per se*, need not contradict international human rights standards. It has even been suggested that the establishment of constitutional democratic State structures is closely connected with the prevalence of universal values which are derived from popular religious convictions.⁴⁴ What may be required, however, is an alternate but equally legitimate interpretation of Islamic law which is in accordance with international human rights standards.

In the specific case of the Bahá'í minority and other religious groups which make such messianic claims,⁴⁵ securing religious tolerance is particularly problematic because of its Constitutional implications on the rule and influence of the *ulamá*. This is further compounded by popular hatred, mistrust and misconceptions which have been based on the malicious misrepresentation of the Bahá'í Faith by the *ulamá*. As demonstrated previously, this intolerance has persisted throughout the history of the Bahá'í Faith, even among the so-called constitutionalist *ulamá* opposed to a traditional Sharí'a State.

⁴⁴ In the words of an eminent Bulgarian sociologist: "The transition to democracy is closely connected with a return to universal values of human existence, most clearly defined in the great world religions."; Nikolai Genov, "The transition to democracy in Eastern Europe: trends and paradoxes of social rationalization", *International Social Science Journal*, Vol. XLIII, No. 2, p. 336.

⁴⁵ An important example of another such religious group in the Sunní context is the Ahmadi minority of Pakistan, although their religious claims are different in many respects from those advanced by the Bahá'ís. The Ahmadis claim to be faithful Muslims and the Sunní Míhdistíc claims of their prophet Mirzá Ghulam Ahmád (1836-1908) is based upon a reassertion of the Sharí'a with certain modifications and not its abrogation as is the case with the Bahá'í Faith. They are nevertheless persecuted by the Pakistani authorities and Ordinance No. 20 of 1984, issued under the rule of General Zíá ul-Haq, prohibits them from using any Islamic terminology in describing themselves.

Within the framework of Shí'ih theology, an argument in favour of tolerance for such religious minorities may be based on a simple analysis of the prerogatives of the *ulamá* in the identification of the Twelfth Imám, in accordance with the fundamental precepts of Islamic constitutional theory. Since the Qá'im has absolute doctrinal authority, it is a theoretical contradiction for the *ulamá* to claim to exercise absolute doctrinal authority in the recognition of His claims. In particular, if the events surrounding His advent do not conform to the interpretation and expectations of the *ulamá*, they do not have the prerogative to denounce Him or to persecute His followers.

Therefore, it is not the messianic claims of the Bahá'í Faith or any other such messianic religious movement which is problematic, but rather, the assumption of absolute doctrinal authority by the *ulamá* to pronounce on the validity of such Míhdistic claims. In other words, it is beyond the power of the *ulamá* to dictate to Muslims and non-Muslims alike, whether they may or may not adopt such a religion. Indeed, the only viable alternative is to make it possible for non-Muslims belonging to this proscribed category of religious minorities as well as Muslims themselves, to exercise their freedom of conscience and religious belief without fear of persecution by the *ulamá*.⁴⁶

In retrospect, it is paradoxical to note that the ancient Shí'ih prophetic tradition itself recognizes that at the time of the advent of the Qá'im, Islamic society and the *ulamá* will have reached a point of extreme corruption and decadence. Indeed, the prophetic foresight of

⁴⁶ It is important to note that the rights of Muslims may also be violated with the restrictions which the *ulamá* have imposed. For example, the *a priori* categorization of such movements by the *ulamá* as heresy, amounts to the categorization of Muslims who become adherents as a *murtadd* (apostate) — referring to a Muslim by birth or conversion, who renounces his religion, irrespective of whether or not he subsequently adopts another faith. The crime of *riddah* (apostasy) is defined as *al-rudju an din al-islam* (turning away from Islam) or *qat al-islam* (severing ties with Islam) and is punishable by death. Muslims who become adherents of such religions, however, often claim to be faithful Muslims who are accepting a new religious dispensation — divine in origin — in succession to Islam, and thus, acting in conformity with the precepts of Islam on prophetic continuity. In other words, they categorize their actions as fulfillment of Islamic messianic prophecies and not as "deviation" from Islam. The interference of the *ulamá* in such a case, is itself viewed by some as the corruption and violation of fundamental Islamic principles.

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There will come a time for my people when there will remain nothing of the Qur'an except its outward form and nothing of Islam except its name and they will call themselves by this name even though they are the people furthest from it. Their mosques will be full of people but they will be empty of right guidance. The religious leaders (*fuqahá*) of that day will be the most evil religious leaders under the heavens; sedition and dissension will go out from them and to them will it return.⁴⁷

⁴⁷ Ibn Bábúya, *Thawáb al-Amál*, cited in Majlisí, *Bihár al-Anwár* (old ed.), Vol. 13, p. 152; cited in Moojan Momen, *An Introduction to Shi'i Islam: The History and Doctrines of Twelver Shi'ism*, p. 168.

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