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THE SEMIOTICS OF WOMEN’S HUMAN RIGHTS IN IRAN

*Susan W. Tiefenbrun**

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INTRODUCTION

The status of women's human rights in Iran today is a complex issue mired in contradiction and paradox, not unlike the Iranian society itself. The Iranian language reflects this paradox because words reportedly have double meanings that produce vagueness and intentional ambiguity resulting in misunderstandings for some and advantages for others engaged in the fine art of hiding what one really means to say. This linguistic deception is not unusual especially for Iranian women who must behave one way publicly and another way privately, even though society, in the Islamist State, has been forced to adopt a universalist moral code that proclaims against relativist ethics.

Human rights abuses are prevalent in Iran today, and women suffer most from this deplorable condition. The following serious human rights abuses exist in Iran and detrimentally impact women: summary executions; disappearances; widespread use of torture and other degrading treatment including rape; severe punishments including stoning to death and public flogging; harsh prison conditions, arbitrary arrests and detention, prolonged and incommunicado detention; impunity of government officials accused of misconduct in judicial proceedings; the influence of conservative government clerics' in the judiciary preventing citizens from due process or fair trials; governmental restriction of the freedom of religion; flagrant discrimination against religious minorities, particularly Baha'is and Jews; governmental control over the selection of candidates for elections; governmental restriction of the work of human rights groups in Iran; domestic and public violence against women; the increase of women children runaways, prostitution and sex trafficking; and increased poverty in Iran where twenty-nine percent of the families below the poverty line consist of single mothers.

Women's human rights and the role of women in Iranian society are tied up in a thick web of historical, political, cultural, economic, social and legal factors all of which work together in an intricate contextual system like a structural puzzle whose parts or elements can be identified and analyzed. Each of these elements is itself a sign system with complex underlying mechanisms. Each sign system plays a significant role in the development and continuation of human rights abuses of women in Iran. Classical structural analysis provides insights into surface and deep meanings. Semiotic analysis, one that studies signs of women's human rights, will reveal hidden, deeper structures that may be unknown even to the women themselves.

Semiotics is the science of signs. Legal Semiotics is the application of semiotic theory to legal or literary discourse by researchers engaged in hermeneutics and the interpretation of complex fields like art, music, literature, film, or the law. Reading, writing, interpretation of documents and cases, negotiation, interviewing, and juror selection are merely a few of the lawyerly tasks involving the fundamental elements of semiotics — an exchange between two or more speakers through the medium of coded language. The study of coded language depends on interpretation and contexts. This semiotic study will examine various types of coded sign systems that, when decoded and interpreted contextually, reveal hidden realities about women's human rights in Iran. The analysis will attempt to determine how and the extent to which basic human rights are being denied to women in Iran today and whether there is hope for more justice and gender equality in Iran in the future.

Part I of this study will examine the historic and political contexts of women's human rights in Iran. Part II will look at the sign system of wearing women's Islamic garb known as the *hejab* or veil in order to uncover the meaning of the many different messages this act conveys. We will discuss the significance of the French headscarf case and the Turkish headscarf case decided finally in the

European Court of Human Rights. That court based its almost unanimous decision denying the right to wear a headscarf in public schools and universities on pure semiotics.

Part III will investigate cultural manifestations of women's human rights abuses in Iran through a study of the memoirs and films of four Iranian women. We will look at the best selling memoir of Azar Nafisi, *Reading Lolita in Teheran*, written by an Iranian woman who is a literature professor. The second memoir is *Iran Awakening*, written by Shirin Ebadi, a former Iranian female judge, who is currently a lawyer, a nobel peace prize winner, and a women's rights activist working within the Iranian system to change it. A powerful documentary film, *Divorce Iranian Style*, sheds light on the institution of marriage in Iran and the deficiencies of its family laws and legal system, especially for women seeking a divorce. We will also look at the contrapuntal view of two Iranian women, one modern and the other forced to be traditional, as represented in the very successful film, *Two Women*, directed by the Iranian feminist filmmaker, Tahmineh Milani. The juxtaposition of these two women represents the contradictions and paradoxes in contemporary Iranian society.

Part IV will investigate the Iranian family laws as a sign system that reflects and conditions the status of women's rights today in Iran. The article will also discuss the inadequacies of the Iranian legal system that is caught up in a difficult relationship with Islam and the differing views of Koranic interpretation, some of which negatively impact women. Part V will examine some of the international human rights laws and instruments that protect gender equality. Finally, this study will conclude by looking at the future of women's rights in Iran.

I. HISTORY OF WOMEN'S RIGHTS IN IRAN

A. *Iran and its Invasion by Foreigners*

Despite a constant tension between tradition and modernity in Iran, modern-day Iran actually began in the early nineteenth century¹ by exposure to a wide range of new and Western ideas. At that time it was quite fashionable for rich young Iranian men to be educated in Europe, especially France. Iranians were also exposed to Western ideas by reading translations of European literary and political works. Moreover, after Iran's defeat in two wars with Russia, many European diplomats, merchants, and military advisors came to Iran and influenced the people by their very presence.² But the presence of these foreigners also raised suspicions in the mind of the Iranians. Many claimed that Britain and Russia had imperialistic interests in Iran. When foreigners sold the debt-ridden Iranian government their

1. See ZIBA MIR-HOSSEINI & RICHARD TAPPER, *ISLAM AND DEMOCRACY IN IRAN: ESHKEVARI AND THE QUEST FOR REFORM* 11-18 (I.B. Tauris 2006) (discussing the history and development of "modern" Iran from the nineteenth century to post-Revolutionary Iran).

2. *Id.* at 11.

industrial and commercial concessions,³ this economic trade was interpreted by the religious classes as Iran's willingness to sell out the country and Islam to the West. Reza Shah's infatuation with Western traditions and modernity, which he imposed tyrannically on Iranians, was the start of a movement that resulted in the Constitutional Revolution of 1905 to 1911 in Iran. The aim of this revolution was to limit the despotism of the Shah through the establishment of a constitution, an elected legislature, and an independent judiciary.⁴ Ironically, these were the same goals of the critical revolutionary movement that took place in Iran in the 1970s, a revolution that would change the face of Iran forever and have serious consequences for women's rights and gender equality.

From 1911 to 1921 Iran was occupied by foreigners,⁵ and the country experienced disorder and insurgency until Reza Shah Pahlavi, a westernizing secular nationalist and an army colonel, successfully carried out a *coup d'etat* against the Iranian constitutional government.⁶ Once Reza Shah Pahlavi came to power, he immediately formed a strong military, a centralized bureaucracy, a secular judiciary, and a secular educational system that appealed to the constitutionalists. His reforms were popular, but the constitution itself was largely ignored and dissent was ruthlessly suppressed⁷ during his repressive reign. Reza Shah Pahlavi's obsession with modernity reduced the religious clerics to silence, and they were labeled "fanatical reactionaries."⁸

During World War II and in 1941, British and Soviet forces occupied Iran. Reza Shah was forced to abdicate in favor of his son Mohammad Reza. In April 1951, a reformist Mohammed Mossadegh was appointed Prime Minister of Iran, but when he decided to nationalize the British-dominated oil industry, the British, with the help of the American Central Intelligence Agency, carried out a *coup d'etat* to oust Mossadegh and to restore the Shah to power.⁹ Thus, Mohammad Reza Shah resumed his reign with the support of the United States. The Shah's continued suppression of dissent and parliamentary activity in Iran were wrongs that Iranians blame heavily on the United States. The Shah further alienated much of the country by allowing a massive increase of Western and primarily American

3. *Id.* at 12.

4. *Id.*

5. See JANET AFARY & KEVIN B. ANDERSON, *FOUCAULT AND THE IRANIAN REVOLUTION: GENDER AND THE SEDUCTIONS OF ISLAMISM* 106 (University of Chicago Press 2005) [hereinafter AFARY & ANDERSON, FOUCAULT]. Iran's history and the development of forced dress for women is very much a reaction to the presence of foreign powers in Iran and the desire to retain Iranian and Muslim identity. The 1979 Revolution was also an attempt to free Iran from foreign or Western influences imposed on them by the Shah. "Iran was freeing itself from a foreign yoke, he said (Khomeini 1999, 6:15)." *Id.*

6. See ELAINE SCIOLINO, *PERSIAN MIRRORS: THE ELUSIVE FACE OF IRAN* 385-93 (Free Press 2000) (providing a time line of events leading up to the Iranian Revolution of 1979). See also JAHANGIR AMUZEGAR, *THE DYNAMICS OF THE IRANIAN REVOLUTION: THE PAHLAVIS' TRIUMPH AND TRAGEDY* (State University of New York Press 1991) (discussing an in-depth view of post-Revolutionary Iran and the compatibility of Islam and democracy); see also MIR-HOSSEINI & TAPPER, *ISLAM & DEMOCRACY*, *supra* note 1, at 11-18.

7. MIR-HOSSEINI & TAPPER, *ISLAM & DEMOCRACY*, *supra* note 1, at 13.

8. *Id.*

9. SCIOLINO, *supra* note 6, at 385.

influence in Iran after 1953.¹⁰ In an effort to win popular support, in 1962 the Shah instituted his "White Revolution" that included land reform and voting rights for women. However, very soon thereafter, Ayatollah Khomeini came into the limelight, publicly denouncing the Shah for his reforms as undermining of Islam, for his attacks on the clergy, and for his dependence on foreigners. Khomeini was arrested in 1963 and ultimately was exiled to Turkey and later Najaf, where he remained until 1978, one year before the Revolution.

B. The Iranian Revolution Against "Westoxication"

The Iranian Revolution was a mobilization of the people against the tyranny of the monarchy¹¹ and against the Shah's infatuation with Western and American customs and values (*i.e.* "Westoxication") that allegedly robbed Iranians of their own identity. The West's lack of sensitivity to cultural difference and the subtle humiliation of Iranians who many called primitive and backward¹² no doubt exacerbated the revolutionaries' suspicions about the foreigners and the West. Opposition to the Shah came from many factions: the leftists, the religious people and clerics, and the nationalists. The leftists included the *Tudeh* who were linked to the USSR, the Marxist *Fedayan-e Khalq*, the Islamic-socialist *Mojahedine-e Khalq*¹³ as well as the intellectuals who were all opposed to the widespread corruption and oppression of the Shah's regime. Religious opposition to the Shah included a number of Islamic associations composed of professionals, students and intellectuals who all helped forge more modern ideas about Islam and a new Islamic discourse. The nationalists, leftists, and religious revolutionary forces all sought the same goals: to reject the autocratic Pahlavi monarchy, the inequalities in

10. MIR-HOSSEINI & TAPPER, ISLAM & DEMOCRACY, *supra* note 1, at 14.

11. See AZAR NAFISI, *READING LOLITA IN TEHRAN* 86 (Random House 2004).

12. BETTY MAHMOODY & WILLIAM HOFFER, *NOT WITHOUT MY DAUGHTER* (St. Martin's Press 1987). This is a superb novel made into an equally moving film about an Iranian man who left Iran at the start of the 1979 Revolution, received his medical training and degree in the United States where he lived for 20 years, married an American woman, with whom he had a lovely girl child. Troubled by the prejudice against Iranians around him in the hospital, and fraught with guilt about his failure to support Iran in their revolutionary years, he dupes his wife and child into returning to post-Revolutionary Iran. The wife and child are held hostage by the troubled Iranian husband and his rural and very religious, fanatical, Iranian family, who claim to be descendants of Mohammed. This family clearly hates Americans and the corrupt ways of the West. The husband is outraged in America by his colleagues' slurs about Iran's backwardness and primitive traditions, and he is equally outraged by his wife's similar accusations. He is angry at the United States for their support of Iraq during the Iran-Iraq war. As his wife tries desperately to escape from his clutches and the Iranian enslavement she has been subjected to, he threatens to kill his wife and indoctrinate his child into Islam. He calls Islam "the greatest gift I can give my child" and holds his wife forcibly captive inside the home. Immediately upon arrival into Iran, her husband miraculously transforms into someone she cannot even recognize. He asks her to wear the chador and scarf, which for all Iranians is a symbol of respect, national identity, and religious adherence to Islamic values. Very soon thereafter he starts to beat her and terrorize his daughter. *Id.*

13. The Iranian government has outlawed the *Mojahedine-e Khalq Organization*. Prison officials in Iran have threatened to execute a young sympathizer of this group who has been denied access to a lawyer. Valiollah Feyz Mahdavi's trial "did not meet international standards for a fair trial." See Human Rights Watch, *Iran: Political Prisoner at Risk of Execution*, Mar. 16, 2006, <http://hrw.org/english/docs/2006/03/15/iran12998.htm> (last visited Dec. 5, 2007).

society, and the overwhelming influence of the United States in Iran.¹⁴ “The Revolution of 1979 was supposed to empower and embolden the oppressed masses and make them independent of the capitalist foreigners.”¹⁵ The Revolution “was supposed to disinfect the country of ‘Westoxication’.”¹⁶

C. The Role of Women in the Revolution

Proponents of gender equality and equal rights for women in Iran come from diverse social strata: leftist secularists, pro-monarchists, and Islamic feminists.¹⁷ The 1979 Revolution was a popular movement also composed of many different factions, all opposed to the repressive monarchy, and all determined to create a new order that would give greater rights to women.¹⁸

In the early days of the Revolution, Khomeini desperately needed the popular support of the Iranian women to help him overthrow Reza Shah’s regime. To achieve his goal, Khomeini promised more rights and freedom for all women in a new form of government that would be an Islamist democratic theocracy.¹⁹ At that time many secular women, such as Azar Nafisi, who supported a revolution that would provide further rights to all citizens and equality for women, were not supportive of an Islamic or religious state. But these secular women were not prepared to counter the mass support given by religious women for Khomeini and for the Islamists during the Revolution.²⁰

Although many secular women protested the idea of the formation of a theocracy, they were outnumbered by the religious women who believed that an Islamic nation would rescue them from oppression.²¹ Khomeini established the Islamic State by betraying many of his moderate supporters and by eliminating his enemies. In fact, once the Revolution occurred, Khomeini and his supporters consolidated their power by eliminating the opposition, destroying the leftist forces, purging the unsupportive religious leaders, and dividing the secular intellectuals by gender.²² The age-old tactic of divide and conquer worked brilliantly in Khomeini’s favor, allowing him to eradicate several facets of opposition at once.²³ Needless to say that Khomeini’s promises of freedom and equality to women were not completely fulfilled, and he perpetrated what could be called one of the greatest frauds in the history of women’s human rights.

14. MIR-HOSSEINI & TAPPER, *ISLAM & DEMOCRACY*, *supra* note 1, at 15.

15. SCIOLINO, *supra* note 6, at 13.

16. *Id.*

17. See Louise Halper, *Law and Women’s Agency in Post-Revolutionary Iran*, 28 HARV. J.L. & GENDER 85, 103 (2005). Professor Halper’s article is one of the best on the subject of women’s rights in Iran, and I am deeply indebted to her for her encouragement and impeccable scholarship.

18. *See id.* at 105.

19. *See id.* at 108.

20. *See id.* at 107.

21. *See id.*

22. *See id.* at 109.

23. *See id.*

After the Revolution, Khomeini's social and legal policies towards women became stricter and more repressive as he consolidated his political power. For example, soon after his Islamic regime became firmly entrenched, Khomeini declared The Family Protection Law²⁴ *un-Islamic*. This law was instituted by the Shah in 1967 to give greater rights to women in the area of marriage, divorce and child custody. Women judges like Shirin Ebadi were forced to resign their positions,²⁵ and veiling became mandatory. Khomeini's pronouncements forced secular women in government and in other high-level positions to resign or be fired from their positions.²⁶

Ironically, the imposition of the veil under Khomeini's regime has taken on a different meaning and has actually led to greater freedom only for traditional, religious women who were suddenly able to participate in the public sphere for the first time in many years.²⁷ Under Khomeini and in the Islamist Republic, the State guarantees that the public sphere is a safe place for Muslim women to be seen precisely because the State mandates religiously-appropriate behavior by both sexes and strict adherence to the dress code by women. In accordance with the strict interpretation of the Koran, women must be covered up so as not to tempt men to behave indecently. In this post-Revolutionary, highly regulated society, many traditional Muslim women, who were formerly isolated in the privacy of their home, actually experienced more opportunities and greater freedom to participate in education, politics, health, and many other fields.²⁸ Nevertheless, forced veiling had an equal but opposite effect of alienating and isolating secular women, even those who had supported some form of revolution and who opposed the Shah.²⁹

D. Religious and Secular Women in Iran After the Revolution

In order to gain the support of women before and during the Revolution, Khomeini made many pro-feminist promises to guarantee greater support of women's rights and freedoms.³⁰ Once the Revolution ended, Islamic women expected those promises to be fulfilled.³¹ Khomeini did provide rural women with a university education and added more women in Parliament.³² In the absence of secular feminists within the new government, religious women were soon appointed to positions dealing with women's affairs, and they actually became influential in the government's new policies towards women.³³ But the religious

24. SHIRIN EBADI, *IRAN AWAKENING: A MEMOIR OF REVOLUTION AND HOPE* 52 (Random House 2006).

25. *See id.* at 48.

26. *See Halper, supra* note 17, at 123.

27. *See id.* at 124.

28. *See id.* at 124-25.

29. *See id.* at 125.

30. *See id.* at 108.

31. *See id.* at 117.

32. *See id.* at 108.

33. *See id.* at 110.

women in government helped foster anti-secular policies towards women, which was interpreted by the outside world as anti-feminist behavior.³⁴

The division between religious and secular women in post-Revolutionary Iran became more pronounced in the early days of the Khomeini regime, where only Islamic feminists had a real voice in government while secular women such as Azar Nafisi were marginalized.³⁵ The policies of the new regime seemed contradictory and lacked cohesion with respect to women. On the one hand, the government required women to wear the veil, eliminated secular women from government and academic posts, and imposed strict *Shari'a* law on most private matters affecting women and the family.³⁶ On the other hand, the government claimed to advocate women's rights, gave all women the right to a public education, maintained women's suffrage, encouraged political activity in support of the government, and took a relatively moderate stance on family law issues.³⁷

E. Women, War and Feminist Activism in Post-Revolutionary Iran

In the new Iran, "approaches to women's issues were divergent, even contradictory."³⁸ For example, soon after the Khomeini regime took power, Iran went to war with Iraq,³⁹ an event that gave women inordinate power in Iran, while Khomeini continued to create laws and policies that would marginalize women and render them dependent on men in a patriarchal society.

In Europe, during the World War I and II, women gained power because they were left alone to run the family while the men fought the wars. Similarly, the Iran-Iraq war gave more rights to Iranian women than did any other event.⁴⁰ During the war, the strategy of the Iranian government was to outnumber the Iraqi forces. This approach took men out of the home onto the battlefield where dramatic numbers of injuries and fatalities in turn affected the gender balance of Iranian society.⁴¹ Women became indispensable during the war, and they were forced to take over a large percentage of the workforce.⁴² Women had to help maintain the war effort, and for the first time they became the heads of their own households in the absence of a male presence.⁴³

In order to retain the political support of these women, the Khomeini government implemented some policies and human rights laws that were favorable to women, such as child custody laws for war orphans and widows, employment benefits for women, education for women, and many other benefits.⁴⁴ During the

34. *See id.* at 111.

35. *See id.* at 110.

36. *See id.*

37. *See id.*

38. *Id.*

39. *See NAFISI, supra* note 11, at 157.

40. *See Halper, supra* note 17, at 115.

41. *See id.*

42. *See id.* at 115-16.

43. *See id.* at 114-15.

44. *See id.* at 114-16.

ten-year period of war, women in Iran became accustomed to mobilizing for greater rights and successfully achieving them. This pattern of feminist activism in Iran during the war period established a natural cycle in which Iranian women were able to ask for and actually receive more rights without establishing a formal feminist movement. Thus, the mechanisms for Islamist feminism were firmly established during the Iran-Iraq War.⁴⁵ Arguably, the mobilization of women for greater women's rights established a kind of underground resistance movement initially led by the Islamist feminists and then continued by secular women in the 1990's.⁴⁶ In 2006, Shirin Ebadi actually spoke of a "feminist movement" in Iran, but she hastened to add that it was a movement without a leader and without a home office, purposely designed that way to avoid endangering any one woman.⁴⁷

F. Foucault on the Global Impact of the Iranian Revolution

The Iranian revolution was not any ordinary kind of revolution. Michel Foucault, a famous French philosopher, called it:

... a new type of revolutionary movement.... an 'Islamic' movement [that] can set the entire region afire, overturn the most unstable regimes, and disturb the most solid ones. Islam—which is not simply a religion, but an entire way of life, an adherence to a history and a civilization—has a good chance to become a gigantic powder keg, at the level of hundreds of millions of men.⁴⁸

Michel Foucault's prescient remarks made on February 13, 1979⁴⁹ imply that the Iranian Revolution would have an impact far beyond Iran's borders due to the global influence of Islam.

Unfortunately, after the Revolution Michel Foucault remained silent regarding human rights violations and feminist protests in Iran and abroad against Khomeini's order that women re-veil.⁵⁰ Foucault's deafening silence about women's human rights abuses in particular is the reason why his writing was attacked by feminist, leftist, and liberal intellectuals⁵¹ who were no longer in center stage after the Revolution. By late February 1979, the real power in Iran was in the hands of the Revolutionary Council, a small and secretive group of clerics hovering

45. *See id.* at 117.

46. *See id.* at 119.

47. Shirin Ebadi, Interview & Lecture at the Univ. of San Diego Joan B. Kroc Inst. for Peace & Justice Distinguished Lecture Series, *Iran Awakening: Human Rights, Women and Islam* 16 (Sept. 7, 2006), available at <http://peace.sandiego.edu/events/DLS/PDF/IPJBookEbadi.pdf> [hereinafter Shirin Ebadi Lecture/Interview].

48. AFARY & ANDERSON, FOUCAULT, *supra* note 5, at 107.

49. *Id.*

50. *Id.* at 108.

51. *Id.*

around Khomeini who were responsible for summary executions, public whippings for alcohol consumption,⁵² and other infractions like mal-veiling.

Michel Foucault actually traveled to Iran, met with Khomeini, and celebrated the Iranian Revolution.⁵³ Foucault was initially impressed with the principles and concerns of the revolutionaries in Iran in 1979,⁵⁴ and was called upon to admit that his support for the Khomeini regime was an error.⁵⁵ Foucault considered the Iranian Revolution comparable to previous anti-colonial struggles, referring to the United States and other Western backers of the repressive Shah as imperialists.⁵⁶

For Foucault the Iranian Revolution was typical of the contradictions in Iranian society in general.⁵⁷ The Iranian Revolution was greater and deeper than a pure manifestation of Iranian "nationalism" because the Revolution also involved a xenophobic revolt against modernism, against the West, against all foreigners and against Jews.⁵⁸ Foucault identified a deep-seated anti-Semitism⁵⁹ in Iran around the time of the Revolution: "There were demonstrations, verbal at least, of virulent anti-Semitism. There were demonstrations of xenophobia, and not only against the Americans, but also against foreign workers who had come to work in Iran."⁶⁰ Later Foucault criticized the Islamist Republic for its unfair trials⁶¹ and summary executions that the regime tried to justify as an attempt to purify the country of its Westernized corruption. For Foucault, the Iranian Revolution was a revolution unlike any other, and it was "... outside the Western paradigm of revolution... perhaps even outside history itself..."⁶²

52. *Id.* at 109.

53. *See id.* at 118.

54. *Id.*

55. *Id.* at 119-20.

56. *Id.* at 123.

57. *Id.*

58. *See id.* at 124-25.

59. *See* U.S. Department of State, Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, *Iran* (March 4, 2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/nea/8251.htm> (discussing the reported persistence of anti-Semitism in Iran).

Estimates of the size of the Iranian Jewish community vary from 25,000 to 30,000. These figures represent a substantial reduction from the estimated 75,000 to 80,000 Jews who resided in the country prior to the 1979 revolution. While Jews are a recognized religious minority, allegations of official discrimination are frequent. The Government's anti-Israel policies, coupled with a perception among radicalized Muslim elements in Iran that Jewish citizens support Zionism and the State of Israel, create a threatening atmosphere for the small Jewish community....an increase in anti-Semitic propaganda...education of Jewish children has become more difficult in recent years... Jews were gradually dismissed from most government positions after 1979.

Id.

60. AFARY & ANDERSON, FOUCAULT, *supra* note 5, at 124.

61. *See id.* at 129.

62. *Id.* at 131.

G. The Birth of the New Islamist Republic

On January 16, 1979, the Shah left Iran never to return again, and Ayatollah Khomeini came into power triumphantly on February 1, 1979. Khomeini immediately appointed a provisional government whose members included moderate non-clerical Islamists and nationalists who all wanted a secular democratic republic. But Khomeini's clerical followers, who were populist Islamic radicals, were intent on establishing an Islamic State governed by Islamic law called *Shari'a*.⁶³ Religious hardliners soon took control of the government. On March 30, 1979 a referendum approved the formation of an Islamic Republic claiming to be a democratic theocracy.

H. The New Iranian Constitution and the new Structure of Government

On December 2, 1979 a referendum approved a constitution that was, at best, a compromise document composed of a mixture of democratic and theocratic principles. On the one hand, the Iranian Constitution recognizes the right of the people to choose who will govern them and the right to establish democratic and legislative institutions such as the Parliament and the President, both of which are elected by direct popular vote.⁶⁴ On the other hand, the Iranian Constitution subordinates the people's will to the rule of the clerics through the institutions of the all powerful *Velayat-e faghih* (rule of the Islamic jurist)⁶⁵ or Leadership (*rahbari*)⁶⁶ of the Revolution and the infamous Guardian Council (*shura-ye negahban*).⁶⁷ The Guardian Council is composed of twelve members, six of whom are appointed by the Supreme Leader of the Revolution, and the other six are nominated by the head of the judiciary and approved by Parliament, with tenure of six years.⁶⁸ The Guardian Council acts as an "Upper House" endowed with veto powers to strike down any law passed by Parliament that does not conform to *Shari'a* law and to the Iranian Constitution. Since the Guardian Council interprets the Iranian Constitution,⁶⁹ whatever civil, political, social, economic or cultural human rights that are legislated in favor of women must ultimately come under the judicial review of the Guardian Council.

63. See Halper, *supra* note 17, at 114-15.

64. AFARY & ANDERSON, FOUCAULT, *supra* note 5, at 17-18.

65. GIBBERT H. FLANZ, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: ISLAMIC REPUBLIC OF IRAN 52, art. 91 (Albert P. Blaustein & Gisbert H. Flanz eds., Oceana Publications, Inc. 1992) [hereinafter Constitution of the Islamic Republic of Iran].

66. *Id.* at 61, art. 110 (providing the duties for the leader of the revolution).

67. *Id.* at 52, art. 91.

68. See *id.* at 52-55, art. 91-99 (discussing the scope of the powers of the Guardian Council).

69. MIR-HOSSEINI & TAPPER, ISLAM & DEMOCRACY, *supra* note 1, at 18.

I. Women's Protest After the Revolution in March 1979: Signs of a Feminist Movement

In the early months of 1979, religious extremists implemented the first "Reign of Terror" imposing hard-line interpretations of Islamic law that resulted in many summary executions of military officers of the previous regime, members of the Shah's court, and capitalists who were killed because they had waged "war against God."⁷⁰ Prostitutes, adulterers, and homosexuals were also executed summarily because they allegedly committed the crime of "corruption on earth."⁷¹

On March 8, 1979 Khomeini gave his "infamous order compelling women to wear the *chador*."⁷² Hundreds of Iranian feminists, on their way that day to Tehran University for the International Women's day demonstration, reacted with "bitter derision to this news."⁷³ At the March 8, 1979 International Women's Day demonstration, Iranian women activists and male supporters as well demonstrated in Tehran and Qom against this transformative order for women to re-veil themselves in the traditional *chador* normally worn only by highly religious women.⁷⁴ The demonstration continued for five days and attracted tens of thousands in Tehran. Some leftist men formed a symbolic and protective circle around the women in order to fight off armed attackers from a newly formed group, the Hezbollah,⁷⁵ or Party of God. The Hezbollah chanted "You will cover yourselves or be beaten," and they threw stones, knives and even bullets at the women protestors.⁷⁶ The *Komiteh*, a "shadowy political and police force that was controlled by Khomeini and other mullahs" also harassed and detained women activists.⁷⁷

On March 10, 1979, many thousands marched for women's rights, and fifteen thousand women held a sit-in at the Ministry of Justice. Protesters presented an eight-point proposal to the government calling for freedom for all, regardless of gender, color, race, language and opinion. They demanded free choice concerning dress, freedom of expression, and the removal of "all inequalities between men and women in national law."⁷⁸ By March 12 the women's demonstrations had spread to numerous cities around the country.⁷⁹ But March 12, 1979 was the last big feminist demonstration in Iran, and soon after, the women's movement called off its public demonstrations, largely because of pressures from leftist groups such as the

70. *Id.* at 16.

71. *Id.*

72. AFARY & ANDERSON, FOUCAULT, *supra* note 5, at 112 (emphasis added).

73. *Id.* at 112-13.

74. *Id.* at 111.

75. See Michael Slackman, *Mideast Conflict a Setback for Iran Reform Movement*, N.Y. TIMES, Aug. 1, 2006, at A9. This article shows a provocative picture of a large crowd of aggressive Iranian women with fists clenched and dressed in the *chador* and veil, wearing ammunition to symbolize that they are suicide bombers. These Iranian women are now clearly in support of Hezbollah and in opposition to Israel.

76. AFARY & ANDERSON, FOUCAULT, *supra* note 5, at 111.

77. *Id.* at 112.

78. *Id.* at 113.

79. *Id.*

Fedayeen, which was the most influential group on the campus of Tehran University.⁸⁰ The *Fedayeen* wanted, above all, to avoid a new civil war or possible foreign intervention in Iran.⁸¹

But support for the women demonstrators and activists continued internationally. Simone de Beauvoir called a press conference in Paris on March 19, 1979 to announce that an international delegation of feminist activists and intellectuals was going to Iran to gather information.⁸² Although Simone de Beauvoir ultimately did not go to Iran for health reasons, she made a public statement of solidarity for the Iranian women's movement.⁸³ Kate Millet, a world renown feminist, actually went to the women's demonstrations, but she was expelled by the new regime for "provocations against the Islamic Revolution."⁸⁴ Kate Millet also held a press conference at Orly airport and said, "The Iranian women are marvelous human beings," and "armed with great courage," in spite of the repressive nature of the new regime.⁸⁵

J. Religious Despotism in the Name of Democracy

After the 1979 Revolution and "in a violent return swing of the pendulum, religious despotism had ousted both secularism and democracy"⁸⁶ in Iran. Between June 1981 and May 1982 a second Reign of Terror took place in Iran, and many people were executed or imprisoned so that the Islamic State and clerical government could be firmly secured.⁸⁷

Iran today calls itself a democratic theocracy, and its constitution attests to its democratic intentions.⁸⁸ But a careful look at the structure of government set up in the Iranian Constitution reveals some of the flaws in its democratic intentions, flaws that negatively impact the human rights protections theoretically available to women. For example, the Iranian Constitution names the Leader for life, and the Assembly of Experts eventually choose his successor and even supervise his activities. However, in practice the Assembly of Experts and the Guardian Council form a kind of closed system that gives the Leader unlimited power. He alone makes appointments to the Guardian Council and the Assembly of Experts. In this way, Ayatollah Khomeini and his successors can control both the legislative and executive branches of government... hardly a Western notion of democracy at all.

80. *Id.*

81. *See id.*

82. *Id.* at 114

83. *Id.*

84. *Id.* at 115.

85. *Id.*

86. MIR-HOSSEINI & TAPPER, *ISLAM & DEMOCRACY*, *supra* note 1, at 17.

87. *Id.*

88. *See id.* at 17-18.

K. Public/Private Split in Iranian Society

The religious clerics have enormous power in Iran, and they have “long since regulated Iran’s cultural life, banning discotheques, nightclubs, bars, alcohol, coed sports, satellite dishes, gambling, and many kinds of music.”⁸⁹ Women’s social life in Iran is very restricted because they are relegated to the inside private arena of the home and dependent on their male protectors to provide a social life. Social relationships between men and woman are not permitted in public. This segregation forces people to act one way in public and another way in private. As a result of the segregation of the sexes and an atmosphere of pervasive repression, Iran has seen a rise in prostitution,⁹⁰ which is illegal in Iran, and the trafficking of women,⁹¹ which is a contemporary form of slavery.

Hypocrisy and deception abound within this public/private split that characterizes Iranian post-Revolutionary society. In public, uniformity, anonymity, and conformity reign supreme and are accomplished by strict laws regulating women’s dress code. In public, all women must conform to State rules requiring them to cover their hair completely and be devoid of any makeup or other adornment. The only individuality women have in public is the special way they intricately knot the head scarf under their chin as well as a restricted number of options they have in their choice of clothing in public. Even though uniformity and invisibility of women are intended by the rules of mandatory covering, women can

89. SCIOLINO, *supra* note 6, at 2.

90. See PROSTITUTION BEHIND THE VEIL (Cosmo Film Doc ApS 2005).

91. The 2006 Trafficking in Persons Report (TIP Report) places Iran in Tier 3 for its poor record on human trafficking. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 142 (2006), available at <http://www.state.gov/documents/organization/66086.pdf>.

Iran is a source, transit and destination country for women and girls trafficked for the purposes of sexual exploitation and involuntary servitude.. [Iranian] women and girls are trafficked to Pakistan, Turkey, the Gulf, and Europe for sexual exploitation... Afghan women and girls are trafficked [into Iran]... for forced marriages and sexual exploitation. Similarly, women and children are trafficked internally [in Iran] for the purposes of forced marriage, sexual exploitation, and involuntary servitude... Iranian authorities punish victims of trafficking with beatings, imprisonment, and execution.

Id. Addressing this injustice should be a primary objective for the Iranian Government. One author notes,

In Iran for 25 years, the ruling mullahs have enforced humiliating and sadistic rules and punishments on women and girls, enslaving them in a gender apartheid system of segregation, forced veiling, second-class status, lashing, and stoning to death... The number of Iranian women and girls who are deported from Persian Gulf countries indicates the magnitude of the trade.

Donna Hughes, *Sex Slave Jihad*, FRONTPAGE MAG., Jan. 27, 2004, <http://www.frontpagemag.com/Articles/Printable.asp?ID=11791> (last visited Dec. 5, 2007). See also, Susan W. Tiefenbrun, *The Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 2 LOY. U. CHI. INT’L L. REV. 193 (2005) completely updated in *Updating The Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 38 CASE W. RES. J. INT’L L. 249 (2007), Susan Tiefenbrun, *Copyright Infringement, Sex Trafficking, and Defamation in the Fictional Life of a Geisha*, 10 MICH. J. GENDER & L. 327 (2004), Susan Tiefenbrun, *The Saga of Susannah: A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107 (2002), and Susan W. Tiefenbrun, *Sex Sells But Drugs Don’t Talk: Trafficking of Women Sex Workers and an Economic Solution*, 24 T. JEFFERSON L. REV. 161 (2002).

actually choose from a limited range⁹² of head covers that they are required to wear in public. Some women prefer simply a pastel-colored kerchief or scarf (*roosari*) covering only their hair or a more user-friendly *maqnaeh*, which is a tube of cloth that the woman puts over her head, around her face and over her shoulders.⁹³ A woman can even wear a bright blue *manto* or a red or yellow *maqnaeh*, evidencing more official tolerance to variation in *hejab*.⁹⁴ Many women wear a full-length black overcoat and head covering called a *chador* that covers them from their head to their ankles (supposedly worn by women holding official government positions).⁹⁵ Some women cover not only their head but also their face with a black veil so that only a small slit reveals their eyes. More informally, some women wear a coat over trousers with a head covering that is either a scarf or the *maqnaeh*.⁹⁶ Even though adornment in public is strictly forbidden by law, various kinds of adornment actually accompany the *hejab*, like a gold scarf holder that helps create a decorative bow under the chin, or a frilled scarf worn under the *chador* to create a bit of color along the top of the woman's face.⁹⁷ Moreover, there are variations even within the black *chador* motif. The fabric of the *chador* can be either made of a light or heavy fabric with a pattern woven into the fabric or with a shimmery fabric that can catch the light as the woman wears it.⁹⁸ This is the very small range of dress code options within which all women, Muslims and non-Muslims, can hope to fulfill a basic need for self-expression and individuality by their choice of clothing in public.

In private, women enthusiastically seek out the latest fashion and variety in dress wear. Women, "even some of its most religious women—adorn themselves with makeup and jewelry behind high walls, then cover themselves in black on the streets and struggle for their rights in the most creative and persistent ways."⁹⁹ Thus, the public/private split in Iranian society caused in part by the strictly enforced dress code results in contradictory behavior, if not hypocrisy.

L. *The Quiet Revolt of Women*¹⁰⁰

One must frequently ask, "Why don't the Iranian women revolt against the denial of their rights?" The answer is that they do, but the revolt is quiet, in order to avoid harsh reprisals against them and their family. "[I]ranian women, whether

92. See Halper, *supra* note 17, at 120-29 (providing a detailed discussion of the *hejab* and the range of dress wear).

93. See *id.* at 126.

94. See *id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. SCIOLINO, *supra* note 6, at 6.

100. See Massoume Price, *A Brief History of Women's Movements in Iran: 1850-2000*, <http://www.payvand.com/women> (last visited Aug. 24, 2007) (providing a brief overview of the basic information of the Iranian women's movement over the last two centuries).

they wear black *chadors* or Western dress topped with a small kerchief,"¹⁰¹ are being denied their rights, and they are quietly engaged in "a sustained and creative ideological war"¹⁰² against the State's denial of these fundamental human rights.

With this kind of passive aggression and resistance against authority, women in Iran have made some gains in the area of human rights.¹⁰³ For example, during the Iran-Iraq war, women pressured Parliament to change the custody laws relating to children of a war casualty.¹⁰⁴ Muslim women outside Iran, especially in France, are also waging a quiet revolution.¹⁰⁵

M. Signs of the Denial of Women's Rights in Iran

Even though women have made some human rights gains, they are still discriminated against, repressed, and oppressed in Iran. Blood money—compensation for the victim of a crime—for men is double that of a woman.¹⁰⁶

[W]omen do not serve as judges or religious leaders. [Furthermore,]Adultery is still punishable by stoning to death. Polygamy is legal. In a divorce, fathers control custody of sons over the age of two and daughters over the age of seven. A girl can be tried for a crime as an adult at the age of nine (a boy at fifteen).... [G]irls are allowed to marr[y] at nine.... Women inherit only half of what men do. Men can divorce their wives at will, but women need to prove that their spouse is insane, impotent, violent, or unable to support the family. A woman needs her husband's permission to start a business and sometimes even to get a job.

Married women cannot get passports or leave the country without the written permission of their husbands.... Rape is more often than not blamed on the woman. A woman's testimony in court has half the weight of a man's. Women can be arrested for jogging or bicycling or swimming in sexually integrated places, and for exposing their heads and necks and the curves of their bodies in public. Women are not even allowed to share the same physical space with men of the same profession.¹⁰⁷

101. SCIOLINO, *supra* note 6, at 113.

102. *Id.*

103. See *infra* notes 112-19 and accompanying text in section I.n (providing a more in-depth analysis of the gains made in Iran to protect women's human rights).

104. SCIOLINO, *supra* note 6, at 115.

105. See Marlise Simons, *Muslim Women in Europe Claim Rights and Keep Faith*, N.Y. TIMES, Dec. 29, 2005, at A3.

106. ZIBA MIR-HOSSEINI, ISLAM AND GENDER: THE RELIGIOUS DEBATE IN CONTEMPORARY IRAN 61 (1999) [hereinafter MIR-HOSSEINI, ISLAM & GENDER].

107. SCIOLINO, *supra* note 6, at 115.

Marriage in Iran¹⁰⁸ “is not a contract between equals but an acquisition of property”¹⁰⁹ by the male of the female. The standard marriage contract gives women rights on paper that are difficult to enforce in the Iranian family court which is a “hothouse of double standards and male vengeance.”¹¹⁰ Wife-beating in Iran is tolerated, quite common, but generally denied.¹¹¹ The persistence of this long list of violations of women’s fundamental human rights in post-Revolutionary Iran is troubling but slightly balanced by some small and unexpected developments in women’s rights.

N. Some Unexpected Developments in Women's Rights

Women in Iran today are no longer excluded from public life and politics, and their participation has in fact increased in some noted areas due to, and not in spite of, the compulsory wearing of the veil or *hejab*.¹¹² As of 1996, over thirty-three percent of university students were female, including forty-nine percent in medicine.¹¹³ By 2006, the statistics improved markedly, and Shirin Ebadi and others reported that over sixty-five percent of the university students in Iran were female.¹¹⁴ In some subjects up to seventy percent of Iran’s university students are women.¹¹⁵ Women are now permitted to study mining and agriculture and to serve as judges.¹¹⁶ Many advances in family law have taken place as well. For example, the Family Protection Law of 1967, which curtailed men’s rights to arbitrary divorce, was dismantled and its courts were abolished¹¹⁷ because that law was declared by Khomeini to be in contradiction with the *Shari’a*. But amendments to Divorce Regulations, enacted in 1992, effectively reinstate the rejected elements of the Family Protection Law.¹¹⁸ This study will examine some of the new Iranian legislation¹¹⁹ that provides more rights to women.

108. For a more in-depth analysis of marriage laws and the marriage contract, see *infra* text accompanying notes 407-62.

109. SCIOLINO, *supra* note 6, at 121.

110. *Id.* at 124. For an in-depth view of Iranian family court and the quagmire that faces women who seek to be divorced from their abusive or neglectful husband see DIVORCE IRANIAN STYLE (20th Century Vixen 1998) available at <http://www.wmm.com> [hereinafter DIVORCE IRANIAN STYLE].

111. See SCIOLINO, *supra* note 6, at 123 (“Some people said there is no such thing as wife abuse. Others admitted these things happen but said it’s better not to talk about them.”).

112. See MIR-HOSSEINI, ISLAM & GENDER, *supra* note 106, at 7.

113. *Id.* at n.13.

114. Shirin Ebadi Lecture/Interview, *supra* note 47, at 34.

115. See Xin Li, *Iranian Regime Erases Progress on Women's Rights*, WASH. TIMES, Mar. 8, 2006 (“Up to 70% of university students in Iran are female, said Swanee Hunt, director of the Women and Public Policy Program at Harvard University’s Kennedy School of Government.”). See also Frances Harrison, *Women Graduates Challenge Iran*, BBC NEWS, http://news.bbc.co.uk/2/hi/middle_east/5359672.stm (last visited Dec. 5, 2007).

116. MIR-HOSSEINI, ISLAM & GENDER, *supra* note 106, at 8.

117. *Id.*

118. *Id.*

119. For an analysis of some of Iran’s domestic laws affecting women’s human rights see *infra* section IV on marriage and text accompanying notes 407-51.

II. SEMIOTICS OF *HEJAB*, THE VEIL AND WOMEN'S DRESS CODE

A. *Regulated Dress Code as a Denial of Freedom of Speech*

In the brief history and development of the Islamic Republic of Iran from the nineteenth century until today, one can see a consistent quest for more "opportunities and freedom"¹²⁰ for all Iranians. But Iranian women have borne the brunt of a predominately patriarchal and repressive regime that intentionally discriminates against women and denies them basic human rights. One of the most visible signs of the denial of freedom is the Islamic State's control of women's dress. Shirin Ebadi calls the imposed *hejab* "a symbol of [women's] broader lack of rights."¹²¹ In fact, the way a woman dresses is one of the key signs of her freedom and one of the key issues in women's rights in Iran today.¹²² The right to wear what one wants to wear in the public arena is the right to be seen as an individual, to make a statement about one's own essence, and to express one's own unique form of speech, and this right should not be restricted unreasonably or selectively.

The dress code is a difficult rule to implement legally and socially because its regulation is tantamount to denying one the right to freedom of speech. In order to enforce the rule that women must dress in a manner that comports with Islamic principles, the Iranian government has resorted to nothing less than terrorism. The government puts up warning signs everywhere in public areas stating that "bad-*hejab* (badly covered) women will not be served."¹²³ All women, even foreigners who are not Muslims, must wear the *hejab* in Iran. The morality police (men and women) circulate in cars and stop women on the street whom they claim are not properly veiled in order to terrorize them, arrest them, humiliate and frighten them, on a daily basis.

B. *History of the Veil*

I. To Wear or Not to Wear the Veil: Freedom of Choice

Wearing a head covering known as the *hejab* (also referred to as the "veil") was practiced long before the Islamic Republic came into existence. Veiling probably existed among the Zoroastrians, and the practice of wearing an all-enveloping Islamic veil began in the sixteenth century, although it was not black and its style varied by region.¹²⁴ Wearing of the all black floor-length *chador* seen today in Iran and in other Muslim countries probably began in the eighteenth

120. NAFISI, *supra* note 11, at 261.

121. EBADI, *supra* note 24, at 72.

122. See SCIOLINO, *supra* note 6, at 132.

123. *Id.*

124. *Id.* at 133.

century.¹²⁵ But then the *chador* was worn only by a minority of wealthy women who lived in cities and at court.¹²⁶ These women took up veiling and secluded themselves from public view. Some view the veil as highly “erotic,”¹²⁷ and that is borne out by the many artistic representations of veiled, seductive women who cover not only their hair but also their face. Others view the veil as a sign of religious observance, respect and purity.

In the countryside, women have always worn veils, lively scarves with veils over them, wrapping and gathering them at their waists to free up their arms and to make the garments less cumbersome.¹²⁸ The *chador*, though, is a very bulky and uncomfortable garment that limits women’s physical freedom. “It gets caught in escalators. It drags along the ground collecting dust. It makes it hard to climb stairs. It is hot in summer.”¹²⁹ It is very difficult to wear.¹³⁰ The *chador* does not have a zipper and in order to keep it closed, women have to hold it tightly at the neck, incapacitating the use of one of their hands. Thus, the *chador* or long, black, zipless overcoat is another way in which women are rendered more dependent on men if not physically weakened and powerless.

2. “Do Not Wear the Veil”: No Freedom of Choice

The denial of the freedom to choose whether or not to wear the veil dates back to Reza Shah, when he began his well-intentioned policy of modernizing Iran in 1929. When he forced women to take off the veil, women protested. Ironically, in a tectonic reversal, the same policy denying women the freedom to choose their own dress code was continued by Khomeini and his successors who now force all women to cover their hair and wear the veil. Women protested vigorously when the Shah refused to let them wear the veil, and they also protested when Khomeini forced them to wear the veil in 1979. The protest was clearly about freedom of choice.

In the interests of modernity, Reza Shah ordered all men to dress in European styles and then ordered *kashf-e hejab*, the forced unveiling of women, “which led to rioting that was harshly repressed.”¹³¹ In 1935, Reza Shah actually issued an edict that declared the wearing of traditional dress for both women and men an offense punishable by a prison term.¹³² The army and police enforced the rule by tearing *chadors* off women and handing out free Western-style suits to men.¹³³ Reza Shah also banned men from wearing turbans, and he forbade beards, even for clerics.¹³⁴ The Shah told all Iranian women to “cast their veils” which he referred to

125. *Id.*

126. *See id.*

127. *Id.* at 138.

128. *Id.* at 133.

129. *Id.* at 138.

130. *Id.* at 140.

131. Halper, *supra* note 17, at 121.

132. SCIOLINO, *supra* note 6, at 133.

133. *Id.*

134. *Id.*

as a "...symbol of injustice and shame..."¹³⁵ Many women objected to Reza Shah's edict and refused to leave their homes either because they didn't want to be seen bareheaded in public or just to protest the decree that restricted their freedom of choice. Others found the decree liberating.

3. "Wear the Veil": No Freedom of Choice

Similar to the public outcry against Reza Shah's limitations on women's freedom of choice in dress code, when Khomeini ordered all women to wear the veil in March 1979, women protested against Khomeini's order, and men joined in the protest hurling stones, bottles, and insults. Khomeini called the *chador* that covers the whole body except the woman's face "the flag of the revolution."¹³⁶ Thus, the veil was a negative sign for Reza Shah who saw it as a symbol of injustice, backwardness, and shame and a positive sign for Khomeini who raised the veil to the level of a forceful political symbol. By the beginning of 1982, three years after the Revolution, all women were forced to cover up in the public arena.¹³⁷

C. Sign System of Wearing the Veil

1. Veil is a Sign of Virtue and Honor

Wearing or not wearing the veil is a delicate and difficult issue that is tied up in a complex network of signs and symbols having both positive and negative connotations. For Iranian women, the veil represents many different things. It is a positive symbol designating the cultural and religious "source of protection, respect, and virtue."¹³⁸ The importance of this symbol of virtue has been underestimated. The family honor in Iran rests on the virtue of women.¹³⁹ Thus, an unveiled daughter can signify dishonor to the father and to the whole family.

2. Veil is a Sign of Muslim Identity

The veil is also a positive sign signifying Muslim identity which, by extension, can be interpreted to convey the message of the wearer's opposition to Western civilization. This threatening signification formed the basis of a legal argument in the courts of France, Germany, Turkey, and even the European Court of Human Rights. These courts all upheld the State's right to ban wearing the veil in public schools. This is known as the famous and controversial "headscarf case."¹⁴⁰

135. *Id.* at 133.

136. *Id.* at 134.

137. *Id.*

138. SCIOLINO, *supra* note 6, at 133.

139. EBADI, *supra* note 24, at 114.

140. *See infra* section II.I and text accompanying notes 185-224.

3. Veil as a Sign of Power over Women

The veil is also a negative symbol of the Islamic Republic's power over women.¹⁴¹ By refusing to wear the veil, the woman may not only be signifying a lower degree of her religious conviction but also her political distance from the legal decrees and policies of the State. Thus, refusing to wear the veil may be interpreted by the State as her refusal to adopt a Muslim identity and maybe even her affiliation with what is considered the "evil" West by the Iranian clerics and by the State.

4. Veil as a Sign of Woman's Political Engagement and jihad

Women wearing the *chador* and the veil can be expressing their belief in *jihad*¹⁴² or the holy struggle to spread the faith and to defend the Muslim community. Teaching the faith or spreading the word through an exemplary life is a form of *jihad*. Unfortunately, *jihad* has become synonymous in the Western mind with acts of terrorism carried out by extremist Islamic groups,¹⁴³ by women soldiers,¹⁴⁴ and by women suicide bombers. *Jihad* is an obligation on all Muslims, but women can perform it by merely obeying their husband and wearing traditional garb. Thus, in this strange phenomenon called semiotics or sign systems, wearing the *hejab* and covering the face and head with a veil can be construed in a multiplicity of ways either as a sign of woman's docile obedience to her husband or as a sign of woman's aggressivity, her anti-West sentiment, and her active revolt against corruption. *Hejab* then is a contradictory "signifier of resistance"¹⁴⁵ and non-resistance.

5. Veil is a Polyvalent Symbol of Imprisonment and Liberation¹⁴⁶

The *hejab* is a polyvalent symbol that sends ambiguous and paradoxical messages because of the multiplicity of meanings associated with wearing the veil, the headscarf, and the *chador*. Depending upon the context, the *chador* and scarf can signify both a woman's imprisonment into the privacy of the home as well as her liberation into the more modern public arena.

For many women, wearing the Islamic dress is now their welcomed entry into public spaces, a tool to be used to their advantage, a liberating vehicle.¹⁴⁷ The veil

141. SCIOLINO, *supra* note 6, at 132.

142. See GERALDINE BROOKS, *NINE PARTS OF DESIRE: THE HIDDEN WORLD OF ISLAMIC WOMEN* 108-09 (Anchor Books 1995).

143. See *id.* at 109.

144. See THE NAT'L COUNCIL OF RESISTANCE OF IRAN FOREIGN AFFAIRS COMM., *Women in the Resistance, in WOMEN, ISLAM & EQUALITY* 57 (1995), available at http://www.iran-e-azad.org/english/book_on_women/wi&e.pdf.

145. Halper, *supra* note 17, at 121.

146. See MARJANE SATRAPI, *PERSEPOLIS 2* (Pantheon 2004). Satrapi makes fun of the view that wearing the veil is a form of liberation.

147. See SCIOLINO, *supra* note 6, at 134-35.

is a garment that sends a double message to the world. The woman wearing the veil hides herself in anonymity and conformity, depicting herself by her outer garb as one of the masses of the many “shrouded wives and mothers.”¹⁴⁸ She protects herself in this cloak by becoming just another passive, docile, and religious woman like any other. Paradoxically, however, the veil also represents her as a politically engaged person, a “warrior of Islam,”¹⁴⁹ giving the woman freedom to move about in society and feel powerful through political engagement.

Wearing the veil is a paradoxical sign. The veil signifies both purity and political power and provides women with more social freedom while limiting her physical movement inside her cumbersome garment that she is forced to wear publicly in society. Wearing the veil is like “... a code that allowed anyone and everyone to vent their private aspirations, fears, dreams, and nightmares. An emblem now of progress, then of backwardness, a badge now of nationalism, then of domination, a symbol of purity, then of corruption, the veil has accommodated itself to a puzzling diversity of personal and political ideologies.”¹⁵⁰

D. Veiling as a Form of Humiliation

The State has tried to justify its abusive power to regulate women’s dress code by explaining to women that the headscarf and veil are actually a form of women’s liberation. Wearing the veil permits women to appear in public in accordance with the rules laid out in the Koran. The veil covers a woman’s body and thereby prevents women from tempting men and corrupting morality. In this way, *hejab* provides women with a lever of power.

But wearing the veil is also a means of humiliating women.¹⁵¹ Humiliation is carried out by the “lower-class morals police”¹⁵² (men and women) against higher-class Westernized women, who are accused unjustly of being “loose” women¹⁵³ simply because they choose not to follow the rules of the Koran to the letter and prefer to adopt their own dress code. Moreover, not wearing the veil could be interpreted for women as an act of political treason since the veil can signify a refusal of Western traditions.

E. Veiling and the Koran: A Matter of Interpretation

Although the veil is considered “the most distinctive emblem of Islam,” forcing Muslim women to wear the veil, surprisingly, is not “anywhere in the

148. *Id.* at 136.

149. *Id.*

150. *Id.* at 134-35 (punctuation omitted) (quoting FARZANEH MILANI, *VEILS AND WORDS: THE EMERGING VOICES OF IRANIAN WOMEN WRITERS* (1992)).

151. *See id.* at 142-43.

152. *Id.* *See also* EBADI, *supra* note 24, at 96 (“The *komiteh*, or morality police, harassed all Iranians—Muslims as well as Iranian Christians and Jews, old people as well as the young—but they preyed upon women with a special enthusiasm.”).

153. SCIOLINO, *supra* note 6, at 143.

Quran [Koran]."¹⁵⁴ The tradition of women's "veiling and seclusion (known together as [*hejab*]) was introduced into Arabia long before Mohammed, primarily through Arab contacts with Syria and Iran, where the [*hejab*] was a sign of [upperclass] social status."¹⁵⁵ The "verse of [*hejab*]" first appeared in 627 C.E. and was addressed to Mohammed's wives.¹⁵⁶ The "veil was neither compulsory nor... widely adopted until [many] generations after Mohammed's death, when a large body of male scriptural and legal scholars began using their religious and political authority to regain the dominance they had lost in society as a result of the Prophet's egalitarian reforms."¹⁵⁷

The Koran says, "Say to the believing women that they should lower their gaze and guard their modesty... They should draw their veils over their bosoms and not display their ornaments."¹⁵⁸ This rule, which is interpreted strictly to require all women to appear in public in Islamic dress, was also written into Iran's penal code under Khomeini. But many of the more moderate clerics and secularists claim that "the Koranic verse that defines [the dress code] is subject to interpretation."¹⁵⁹ In fact, Monir Gorji, a woman preacher and activist for the Revolution and the only woman on the Constitutional Council, started to write Koranic exegesis in the late 1980s "in order to show that the Koran does not sanction the restrictions imposed on women by orthodox interpretations of the [*Shari'a*]."¹⁶⁰ But by making the dress code enforceable under criminal law, the Iranian government has removed the flexibility and denied the freedom that interpretation permits.

F. Women's Reaction to the Regulation of Dress Code

How have women reacted in the past to the regulation of their dress code? During the Revolution of 1979, women were permitted to go bareheaded in Iran and were promised increased freedom.¹⁶¹ But one month after the Revolution, Khomeini ordered all women to wear Islamic dress.¹⁶² Women felt betrayed, especially in view of Khomeini's promises to them and the significant role Iranian women played in Khomeini's rise to power. Thousands of women marched and

154. REZA ASLAN, *NO GOD BUT GOD: THE ORIGINS, EVOLUTION, AND FUTURE OF ISLAM* 65 (2005).

155. *Id.* at 65.

156. *Id.* ("Believers... when you ask something from the Prophet's wives, do so from behind a [*hejab*]. This will assure the purity of your hearts...").

157. *Id.* at 66.

158. SCIOLINO, *supra* note 6, at 132.

159. *Id.* at 133.

160. MIR-HOSSEINI, *ISLAM & GENDER*, *supra* note 106, at 84. Mir-Hosseini's very scholarly and illuminating work uncovers the range of Koranic interpretations that are possible by interviewing clerics. She analyzes in depth the exegesis of many conservative and moderate clerics. For scholars of women's rights in Iran, and the notions of gender that inform Islamic jurisprudence, this work is indispensable. She finds three main notions of gender and interpretation: the insistence on "traditional" patriarchal interpretations of the Koran that are based on "complementarity" and "inequality" of the sexes; an attempt to introduce "balance" into traditional interpretations; and finally a radical rethinking of the jurisprudential constructions of gender.

161. SCIOLINO, *supra* note 6, at 134.

162. *Id.*

protested the mandatory veiling.¹⁶³ The American feminist, Kate Millet, showed up at the protest march, branding Khomeini a “male chauvinist,” and she marched with Iranian women.¹⁶⁴ When Millet was expelled,¹⁶⁵ her expulsion made waves among feminists the world over.

Similarly, when Reza Shah forced women to unveil, women objected to the denial of their right to dress as they please or as their religion requires. Wearing the veil later became permissible once again under Mohammed Reza, but ironically *hejab* then took on a decidedly political character and signified anti-Shah sentiments.¹⁶⁶ Women wore the veil to make a political statement against the tyranny of the monarchy. Women remembered that during Reza Shah’s modernization campaign, police began to forcibly unveil women in the streets,¹⁶⁷ not unlike the more recent ‘morality squads’ of the post-Revolutionary Islamic regime that would enforce mandatory veiling by corporal punishment in the streets.¹⁶⁸ The paradox here is that veiling is enforced in Iran today in order to purify the people from the corruption of capitalism and the West, yet stories abound about the corruption among security police who harass women for bad veiling and who steal their purses.¹⁶⁹

Under the reign of Reza Shah, the issue of veiling led to undemocratic class distinction and social unrest. A dichotomy existed between upper-class women, whose families wanted to curry favor with the modern Shah by agreeing to unveil, and the middle and lower-class women primarily in the countryside, who were forced to isolate themselves in order to wear the veil and maintain their religious observances.¹⁷⁰ Nevertheless, Reza Shah often supported further advancement in equality for women.¹⁷¹ Reza Shah tried to implement democracy under his rule, but his version of democracy was imperfect because only the secular, upper-class women in urban areas had access to public education, career opportunities, and political participation. Democracy under Reza Shah was imperfect because at this time “traditional” women living in rural areas were deprived of the right to work and to manage their own finances, and they were forced into seclusion in their own homes, far from public life.¹⁷² Thus, the so-called democratic but heavy-handed reforms of Reza Shah that were administered harshly and selectively actually resulted in further repression and limitation of the rights of rural women in Iran.¹⁷³ Therein lay the roots of the Shah’s downfall. Khomeini promised to right the wrongs that the Shah bestowed upon women, but he betrayed the very women who

163. *See id.*

164. *Id.*

165. *Id.*

166. Halper, *supra* note 17, at 121.

167. *Id.*

168. *Id.* at 123; *see, e.g.,* NAFISI, *supra* note 11, at 167.

169. *See* SCIOLINO, *supra* note 6, at 145.

170. *See* Halper, *supra* note 17, at 122.

171. *See id.*

172. *See id.*

173. *See id.*

put him into power. When Khomeini reintroduced *Shari'a* law, women's rights in Iran suffered a severe setback.

G. Veiling as a Form of Segregation

Wearing the *chador* and veil distinguishes women from men and, in that sense, isolates women. Mandatory segregation of men and women in Iran is actually regulated by law, but in practice it is rather complicated, confusing, and contradictory. For example, men and women are legally segregated in government offices but not in the elevators leading up to the offices. When Ahmadinejad, the current President of Iran, was Mayor of Tehran, he enforced separate male/female elevators in public buildings, canceled concerts and reinforced wearing the full *chador*.¹⁷⁴ Men and women are still required by law to use separate entrances at airports, but they sit together on domestic flights. Prayer is always segregated in mosques.¹⁷⁵ Buses are segregated, and women must ride in the back, but taxis are not segregated.¹⁷⁶ Public toilets are integrated.¹⁷⁷ There is a ban on men and women handshaking in order to implement the defined distance allowed between men and women.¹⁷⁸

H. Meaning of Resistance to Veiling

The *hejab* is undeniably a symbol of the will of the Islamic State, and women's quiet but courageous resistance to this kind of repression is barely visible yet present everywhere in everyday life in Iran. "[T]here is no consensus among Iranian women on *hejab*... enforcement of it can be empowering to women."¹⁷⁹ "Although it undoubtedly restricts some, it emancipates others by legitimizing their presence in public, which is still a male domain" in Iran.¹⁸⁰ "Many women in Iran today owe their education, their jobs, their economic autonomy, and their public persona, to *compulsory hejab*."¹⁸¹ Nevertheless, many women try to resist compulsory veiling. When Shirin Ebadi accepted the Nobel Peace Prize in 2003, she wore Western garb and no headscarf. In a recent interview with her, I asked Shirin Ebadi whether the State as well as Iranian women at large objected to her choice of dress on that public occasion that was televised internationally.¹⁸² She answered that women applauded her decision to choose Western garb, even though

174. SCIOLINO, *supra* note 6, at 367.

175. See, e.g., MIR-HOSSEINI, *ISLAM & GENDER*, *supra* note 106, at 79.

176. SCIOLINO, *supra* note 6, at 147.

177. *Id.* at 147.

178. See, e.g., SCIOLINO, *supra* note 6, at 148. In the movie, *Not Without my Daughter*, Betty shakes the hand of her "liberator," an Iranian "modern" secular man, who helps her escape captivity, but who flinches, nevertheless, when she shakes his hand at their first meeting. See *NOT WITHOUT MY DAUGHTER* (Pathé Entertainment 1991).

179. MIR-HOSSEINI, *ISLAM & GENDER*, *supra* note 106, at 278.

180. *Id.*

181. *Id.*

182. Shirin Ebadi Lecture/Interview, *supra* note 47, at 19.

the State objected.¹⁸³ When I asked her if it's true that most women in Iran today would prefer to dress in Western garb, she said incontrovertibly "It's true."¹⁸⁴

I. Laws Outside Iran Banning the Veil in Public Schools: The Headscarf Case in France, in Turkey, and in the European Court of Human Rights¹⁸⁵

The forced wearing of the headscarf is a very controversial legal and political issue that has risen to the level of the domestic and international courts not only in France, but in Germany, in Turkey, and in the European Court of Human Rights ("ECHR").

The French headscarf case has lasted more than a decade and has resulted in the passing of a law banning the headscarf in public schools, the legal reasoning of which is based on adherence to a sacred French principle of secularism or the separation of religion and State.

The headscarf controversy in France erupted in October 1989 when the principal of a majority-Muslim middle school in the Parisian suburb of Creil suspended three Muslim girls because they wore their headscarves in the classroom of a public school.¹⁸⁶ The Minister of Education, Lionel Jospin, referred the matter to the Conseil d'Etat, France's highest Administrative Court, for a legal opinion.¹⁸⁷ The Conseil d'Etat ruled on November 27, 1989 that wearing religious garb in a school "is not in itself incompatible with the principle of secularism" but must not "constitute an act of pressure, provocation, proselytism or propaganda" that "impinges on the freedom of the other students or impedes the school's educational mission."¹⁸⁸ Here the ruling has a double edge that reflects the principle of secularism in France requiring the public schools to respect the free expression of religion, while also imposing limitations on that principle. Thus, the ruling of the Conseil d'Etat seems to be in favor of the girls and their right to wear a headscarf in public schools. However, this ruling opinion places the implementation of limiting conditions in the hands of the individual school principals who must

183. *Id.*

184. *Id.*

185. See Olivier Dutheillet de Lamothe, *The French Headscarf Case: Why Girls Cannot Legally Wear Headscarves in French Public Schools* (July 10, 2006) (unpublished, on file with author, Susan Tiefenbrun) [hereinafter Dutheillet de Lamothe, *French Headscarf Case*], available at http://www.law.nyu.edu/colloquia/constitutionaldemocracies/materials/The_French_Headscarf_case_NICE_JULY_2006.pdf. Olivier Dutheillet de Lamothe is a member of the Constitutional Council of France. The unpublished paper was delivered at the University of Nice School of Law International Conference on Women's Rights, sponsored by the Hofstra Law School International Law Summer Program in France, on July 10, 2006. Much of the information in this section of my article is derived from this paper. I am deeply indebted to Judge Dutheillet de Lamothe for his incisive and sensitive analysis of the cultural dilemma on which this case is based. It is purely a matter of the interpretation of the sign system of the headscarf, which, as we have shown, involves an analysis of the historical, political, cultural, and legal contexts in which the sign appears.

186. *Id.* at 1.

187. *Avis de l'Assemblée Générale du Conseil d'Etat*, No. 386.893 (Nov. 27, 1989) (Fr.), available at http://www.conseil-etat.fr/ce/missio/index_mi_cg03_01.shtml.

188. *Id.* (translated by author).

determine on a case-by-case basis whether to ban the headscarf.¹⁸⁹ This determination is naturally based on the principal's interpretation of the significance of the person's act of wearing the headscarf.

The reaction to the opinion of the Conseil d'Etat is quite interesting. In 1994 commentators began to report an increased number of girls wearing the headscarf.¹⁹⁰ What was once just a handful had grown to 700 students who wore the veil in public schools because of the favorable opinions by the Conseil d'Etat in 1989, 1992, and 1999.¹⁹¹ In those ruling opinions students in forty-one of the forty-nine cases were given the right to wear the headscarf in French public schools.¹⁹² In 2003, the last year before implementation of the French law banning the headscarf, 1500 girls wore the headscarf out of ten million students.¹⁹³ This large number reflects the intense pressure being put on principals to rule in favor of the free expression of religion and the wearing of the scarf in French public schools.

Political pressure against the headscarf began to mount because of the large increase in girls wearing the headscarf in French public schools. President Chirac appointed a Commission in 2003, headed by a conservative politician Bernard Stasi, to examine the issue of secularism and the headscarf.¹⁹⁴ On December 11, 2003, the Commission composed of politicians, scholars and other people unanimously recommended a ban on wearing the headscarf.¹⁹⁵

This Commission voted to ban the headscarf for many reasons. One justification for the ban was the liberation that such a prohibition would provide to the many girls who testified that they were being pressured by their parents to wear the headscarf against their will.

Other reasons for the ban are bound up in the political significance of the headscarf in France. Some argued that the headscarf is a symbol of political passion felt by North African immigrants against native French people who fear the rise of fundamentalist Islam in France.¹⁹⁶ The French fear that fundamentalism will infiltrate French political and social life. In fact, the headscarf was interpreted to be a clear sign by the girl wearing the scarf that she rejects the process of integration into French society.¹⁹⁷ The Stasi Commission saw the headscarf, then, as a political threat.¹⁹⁸

189. Dutheillet de Lamothe, French Headscarf Case, *supra* note 185, at 2.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.* at 3.

195. *Id.* See also Bernard Stasi, Commission de réflexion sur l'application du principe de laïcité dans la République [Commissions' reflection on the application of the principle of secularity in the Republic], Dec. 11, 2003 (Fr.), available at <http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf>.

196. *Id.*

197. *Id.*

198. *Id.* at 4.

The French Parliament voted unanimously on March 15, 2004 to enact a short bill stipulating the following: "In public schools, the wearing of symbols of clothing by which the students *conspicuously* manifest a religious appearance is forbidden."¹⁹⁹ The interpretation of this law is troublesome for several reasons. What is a "conspicuous" religious symbol? Is it "conspicuous" to wear a big cross, a large Jewish star, a bright colored yarmulke, a black Turban, clicking worry beads, etc.? How big does the symbol have to be before it becomes "conspicuous?" These questions of interpretation of the law bother many jurists.

More bothersome, of course, is the law's arguably flagrant violation of the freedom of speech and the freedom to manifest one's religion. The French justify banning this type of speech because it is tantamount to a political threat, like yelling "fire" in a crowded movie theatre is impermissible speech under American law. The issue here is the interpretation of the symbol as a political threat, and this interpretation is deeply bound up in a contextual matrix of French history, French culture, the rise of a huge immigrant population in France and, with that, the rise of anti-West sentiment, and current events in France and in other parts of the world related to terrorist threats.

Justification of the French legal ban on wearing a headscarf in public schools is virtually inconceivable to an American jurist and to American citizens for whom the principle of freedom of speech is a basic constitutional right. This right to free speech is so fundamental that American law permits the outrageous act of burning of the American flag²⁰⁰ on the theory that this is a permissible yet reprehensible expression of free speech.

Moreover, the French ban on wearing the headscarf seems destined to cause more immigrant students to move out of the public schools in France and into the social isolation of private schools where they can be influenced by some dangerous *imams* in *madrassas* or schools that reportedly harbor intense anti-West sentiments. The ban denying the right to young girls to manifest the expression of their religion could result in the erosion of a much needed policy of integration of immigrants into French society.

It is true that most Americans cannot understand or justify this ban because it flies in the face of the First Amendment of our Constitution. Freedom of speech is America's most precious freedom. However, Americans must understand that the most precious legal principle in France is secularism and the separation of Church and State. In France, secularism is the dominant ideology of the Republic that was founded in defiance of the Church and the monarchy. In the United States the Establishment Clause, the free exercise of religion and the freedom of speech were written early into the bill of rights of the United States Constitution in 1791. However, in France the freedom of speech and the free exercise of religion were established much later by the French Parliament in 1905. Thus, in order to understand the French interpretation of the headscarf, one must consider the historical and cultural context of secularism in France.

199. *Id.* (emphasis added).

200. *Texas v. Johnson*, 491 U.S. 397, 399 (1989).

The United States and France have very different attitudes toward immigrants. The United States is founded on the principle of a heterogeneous society or melting pot whereas France lays claims to a more homogeneous society. The United States was founded on the labors of the many immigrants who came in waves throughout its history. Generally speaking, the United States is very respectful and not fearful of the different faiths of its many immigrants.

Despite the arguments raised against the ban and the fears of its impact on French society, the implementation of the French ban on wearing a headscarf in public schools has been rather smooth. There are fewer headscarves in schools in France today because of the ban. In 2003, 1500 girls wore the headscarf, and in 2004, only 600 continued to wear it in areas with a higher number of Muslims in the community (Montpellier, Strasbourg, Lille, Creteil).²⁰¹ Predictably, 143 girls left the public school either on their own recognizance or after being expelled for wearing the scarf and violating the ban.²⁰² Three of the forty-seven students expelled were excluded for wearing a Sikh turban.²⁰³ When twenty-eight immigrant families referred the expulsion decisions to the French courts, the referrals to the Courts were all rejected.²⁰⁴

1. Leyla Sahin v. Turkey (European Court of Human Rights)²⁰⁵

Even though the ban on wearing the headscarf in France seems inconceivable to the American jurist, a similar case was referred by a Turkish woman to the European Court of Human Rights. That Court, which is an international court whose final decision preempts State court decisions in Europe, expressly recognized the necessity to leave to the national authorities of each individual State "a margin of appreciation" to decide on cases involving the wearing of religious symbols in teaching institutions.

Leyla Sahin, a Turkish citizen, originally lodged a complaint with the European Commission of Human Rights under Article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR)²⁰⁶ against the Republic of Turkey for denying her the right to wear the Islamic headscarf in an institution of higher education in Turkey. The application was transmitted to the European Court of Human Rights on November 1, 1998, and the Court ultimately rendered a judgment based on an almost unanimous vote. On November 10, 2005 the European Court of Human Rights ruled to leave this decision up to the individual States because rules on the subject of the wearing of religious garb vary from one country to another depending on national traditions.

201. Dutheillet de Lamothe, French Headscarf Case, *supra* note 185, at 4.

202. *Id.*

203. *Id.*

204. *Id.*

205. Sahin v. Turkey, No. 44774/98 (Eur. Ct. H.R. June 29, 2004), <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (search by Application Number).

206. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 4.XI Eur. Ct. H.R. 1950 [hereinafter ECHR].

The Turkish law of 1998 banned the wearing of headscarves or, for men, of beards in universities. Leyla Sahin, a Turkish medical student, was refused admission to a neurology lecture on June 10, 1998 and to a written examination on oncology earlier because she wore her headscarf.

The European Court of Human Rights argued that the wearing of the headscarf is “a symbol of political Islam.”²⁰⁷ The Court’s interpretation of the act of wearing a headscarf was filtered by political conditions in Turkey at the time of this case. Turkey’s attachment to democratic values was being threatened by “accession to power on June 28, 1996 of a coalition government comprising the Islamist [*Refah Partisi*], which was viewed as a “genuine threat to republican values and civil peace.”²⁰⁸ The European Court of Human Rights inferred that wearing the scarf was also a symbol of women’s lack of equality in Turkey.²⁰⁹

Ultimately, the European Court of Human Rights declared that the ban on wearing the headscarf in Turkish universities was not a violation of Article 9 of the ECHR.²¹⁰ The European Court of Human Rights claimed that there is no uniform European conception of the requirements of ‘the protection of the rights of others’ and of ‘public order.’²¹¹ Therefore, whether or not the act of wearing the headscarf rises to the level of a political symbol or a political threat is up to the State to decide.²¹² So in *Leyla Sahin v. Turkey* (*European Court of Human Rights, 2004*), the highest court of human rights voted 16:1 in favor of giving the State discretion to declare a ban on wearing the headscarf in public universities.²¹³ This decision, together with the French ban of March 15, 2004 in primary and secondary schools, leaves the issue of the woman’s right to wear the headscarf in all public schools including universities up to the determination of the State.

2. The Meaning of Dissent in the Headscarf Case

The one dissenting opinion in the European Court of Human Rights headscarf case by Judge Tulkens is very revealing. Judge Tulkens does agree strongly with the majority that the right to freedom of religion guaranteed by Article 9 of the ECHR is a “precious asset” not only for believers, but also for atheists, agnostics, skeptics and the unconcerned.²¹⁴ He agrees that in “democratic societies, in which several religions co-exist, it may be necessary to place restrictions on the freedom to manifest one’s religion in order to reconcile the interests of the various groups

207. *Sahin v. Turkey*, No. 44774/98, para. 35 (Eur. Ct. H.R. June 29, 2004), <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (search by Application Number).

208. *Id.*

209. *See id.* at para. 11 (Tulkens, J., dissenting).

210. *Id.* at para. 123.

211. *Id.* at para. 70.

212. *Id.* at para. 115.

213. *Id.* at para. 3.

214. *Id.* at para. 1 (Tulkens, J., dissenting).

and ensure that everyone's beliefs are respected."²¹⁵ He agrees that compromise is necessary in a pluralistic democratic society based on tolerance.²¹⁶

Admittedly, this ban on wearing the Islamic headscarf on university premises is clearly an interference with the right under Article 9 of the ECHR to manifest one's religion, but it is an interference that has a legitimate aim—"the protection of the rights and freedom of others and of public order."²¹⁷ To determine whether this interference is "necessary in a democratic society," the Court must be convinced that the interference with the freedom to manifest one's religion is "appropriate" and is "the least restrictive [measure]" and that the "measure was proportionate."²¹⁸

In this case, the reasons for imposing the ban on wearing the headscarf were based on two arguments: secularism and equality.²¹⁹ Judge Tulkens finds it inconsistent, if not paradoxical, that "manifesting one's religion by peacefully wearing a headscarf may be prohibited whereas, in the same context, remarks which could be construed as incitement to religious hatred are covered by freedom of expression."²²⁰ The decision by the Court is based on "the threat posed by 'extremist political movements' seeking to 'impose on society as a whole their religious symbols and conception of a society founded on religious precepts' which, in the Court's view, serves to justify the regulations in issue, which constitute 'a measure intended to (...) preserve pluralism in the university.'"²²¹

The judge agrees on the need to prevent radical Islamism, but he objects to the reasoning of the Court because in his view merely wearing the headscarf cannot be associated with fundamentalism.²²² "[I]t is vital to distinguish between those who wear the headscarf and 'extremists' who seek to impose the headscarf as they do other religious symbols."²²³ "Not all women who wear the headscarf are fundamentalists..."²²⁴

Judge Tulkens' dissent, and the decision itself are based on semiotics. For this judge, the act of wearing a headscarf does not necessarily signify fundamentalist affiliation and anti-West sentiments that threaten the Western world. However, for a grand majority of the judges on the European Court of Human Rights, the French Courts, and the Turkish Courts, the headscarf did have this threatening signification that warranted the ban on the freedom of speech and the freedom to manifest one's religion.

215. *Id.*

216. *Id.*

217. *Id.* at para. 2 (Tulkens, J., dissenting).

218. *Id.*

219. *Id.* at para. 4 (Tulkens, J., dissenting).

220. *Id.* at para. 9 (Tulkens, J., dissenting).

221. *Id.* at para. 10 (Tulkens, J., dissenting).

222. *Id.*

223. *Id.*

224. *Id.*

III. SIGNS OF WOMEN'S RIGHTS IN IRAN AS REPRESENTED IN THE HUMANITIES

The content of literature, film, and the law often reflect prevailing social, political, and economic conditions. Authors and filmmakers use mediated forms of communication to convey personal messages to readers and viewers about the need for social change. Legislators write laws, and lawyers and judges interpret and carry them out in order to change injustices in society. These vehicles of communication— literature, film, and the law— are sign systems reflecting infrastructural conditions that can and do affect women's right to equality and justice. Important information about society, its traditions and sometimes its hidden policies perpetuated by government, can be conveyed most effectively through mediated signs. Messages are not conveyed by words alone. As the proverbial statement suggests — a picture is worth a thousand words — communication happens by transmission of information through signs and symbols — and this is the essence of the semiotic system.²²⁵ A writer speaks sometimes directly to her readers through words and sometimes indirectly through tropes and literary figures that need interpretation to uncover the meanings hidden in analogies. The filmmaker communicates messages through the immediacy of pictures that create an aura of authenticity and drama.

This study will look at four artistic works written or directed by four Iranian women all of whom portray the state of women's human rights in post-Revolutionary Iran. The first is a memoir of an Iranian woman who is no longer living in Iran. *Reading Lolita in Tehran* was written by Azar Nafisi, a literature professor who chose to withdraw from the public arena in post-Revolutionary Iran in order to immerse herself in the world of the imagination and in the privacy of her home, with a few of her favorite students, mostly women, who read, interpret, and discuss great books of primarily Western literature. Nafisi's decision to withdraw into the world of interpretation is her form of passive resistance to the violation of women's rights occurring in post-Revolutionary Iran. Nafisi continued to actively resist against oppression when she wrote her own memoir after she left Iran. The book became an instant best seller not only because of its treasures of valuable information about Iranian society but also because of its beautiful, learned and literary style that appeals especially to experienced readers of literature.

The second book is also a memoir of an Iranian woman who lived through the 1979 Revolution and who still continues to fight within the legal system for human rights, women's rights, and the rights of Iranian political prisoners.²²⁶ Shirin Ebadi's *Iran Awakening* recounts the life of one Iranian woman who, like all

225. See Susan Tiefenbrun, *Legal Semiotics*, 5 CARDOZO ARTS & ENT. L.J. 89 (1986) (discussing the history and development of semiotics and its application to the field of law). Tiefenbrun has written extensively on the application of semiotics to the law. See, e.g., Susan Tiefenbrun, *A Semiotic Approach to a Legal Definition of Terrorism*, 9 ILSA. J. INT'L & COMP.L. 357 (2003).

226. See also CHRISTOPHER DE BELLAIGUE, IN THE ROSE GARDEN OF THE MARTYRS: A MEMOIR OF IRAN (Harper Collins Publishers 2004). Christopher de Bellaigue was born in London and spent the past decade in the Middle East. He lives in Tehran now. He writes from personal experience about the Mullahs, the artists, the traders, mystics, academics and all those who were revolutionaries in Iran.

women, assumes many roles--wife, mother, female judge removed from the bench simply because she is a woman living in a patriarchal society, activist lawyer for women's human rights, and the Nobel Peace Prize winner in 2003. Although Shirin Ebadi can now become a judge again in Iran, she prefers to remain a human rights defense attorney in order to help more effectively in the advancement of women's rights. Her book is provocative and political; a form of active revolt by a woman who chooses to remain in Iran. Thus, Nafisi and Ebadi both represent two different styles of resistance and two legitimate forms of engagement.

The third work is a documentary film, *Divorce Iranian Style*, co-directed by a woman, Ziba Mir-Hosseini, "who is a feminist, an Iranian, and a Muslim,"²²⁷ with an independent British filmmaker, Kim Longinotto. The film was inspired by Mir-Hosseini's book *Marriage on Trial*, based on her ethnographic research on Islamic Family law.²²⁸ The film focuses on four women who come to court either to divorce their husband, to obtain their rightful marriage gift, to teach their husband a lesson, or to regain custody of their two daughters who were taken away legally by their husband as a result of a divorce initiated by the wife.²²⁹ This film paints a vivid picture of the deficiencies of the Iranian family laws and the family court system, its bureaucracy, its patriarchy, and its lack of fairness to women.

Mir-Hosseini is a social anthropologist who collected case studies of marriage and divorce in order to report on the conflicts and contradictions between marriage as represented in the law and marriage as it actually exists in reality.²³⁰ She put the results of her case studies into a creative documentary film that reveals many subtleties of the legal system in Iran. Due to strict censorship policies, the film has not been publicly screened in Iran, even though the co-directors successfully obtained a "permit to film by Khatami's reformist government."²³¹ Nevertheless, the film was not shown in Iran but is known and has been seen by those who regularly attend film festivals abroad and by ordinary people who heard reports of it on the "BBC and [on] Voice of America Persian-language programs, both of which have many listeners in Iran."²³² Most film critics, both Iranian and foreign, were enthusiastic about the film that apparently "helped to humanize Iranians, who have been demonized in the West since the Revolution."²³³

In order to contrast Mir-Hosseini's very accurate and at times humorous picture of the grim state of women's rights in Iran and the unfairness of its family laws, we will also look briefly at another very important film depicting two different kinds of women in Iran today. The film, *Two Women*, directed by an

227. Ziba Mir-Hosseini, *Negotiating the Politics of Gender in Iran: An Ethnography of a Documentary*, in *THE NEW IRANIAN CINEMA: POLITICS, REPRESENTATION AND IDENTITY* 167, 196 (Richard Tapper ed., 2002) [hereinafter Mir-Hosseini, *Negotiating Gender*].

228. *Id.* at 167.

229. *See id.*

230. *See* Ziba Mir-Hosseini, *Tamkin: Stories from a Family Court in Iran*, in *EVERDAY LIFE IN THE MUSLIM MIDDLE EAST* 136, 137-50 (Donna Lee Brown & Evelyn A. Early eds., Indiana Univ. Press, 2d ed. 2002) [hereinafter Mir-Hosseini, *Tamkin*].

231. Mir-Hosseini, *Negotiating Gender*, *supra* note 227, at 192.

232. *Id.*

233. *Id.*

Iranian feminist filmmaker Tahmineh Milani, portrays a woman who is actually a symbol of the modern Iranian woman. She is married, happily protected and supported psychologically by her husband who miraculously shares in the household chores. The film portrays the tragic transformation of another woman who was once young, beautiful, modern and intellectually curious. Because of her father, she is forced to leave the university, marry a man she despises, and become a more traditional woman in Iran. She is enslaved in a loveless marriage with an abusive husband who imprisons her into the deepest interiors of his household. This movie "attracted more viewers and sparked more reaction than any other [film] in recent memory,"²³⁴ and its filmmaker is one of the few women in Iran today who admits to being a 'feminist.'

Let us now look more deeply into these four different representations of women's human rights abuses in the humanities.

A. Azar Nafisi: Reading Lolita in Tehran

No amount of political correctness can make us empathize with a child left orphaned in Darfur or a woman taken to a football stadium in Kabul and shot to death because she is improperly dressed. Only curiosity about the fate of others, the ability to put ourselves in their shoes, and the will to enter their world through the magic of imagination, creates this shock of recognition. Without this empathy there can be no genuine dialogue, and we as individuals and nations will remain isolated and alien, segregated and fragmented.²³⁵

Reading Lolita in Tehran is a compelling narrative of a woman's struggle to protect her individuality and satisfy her passion for experiencing life through literature in post-Revolutionary Iran. As the State continued to blur the distinction between the personal and the political in Iran, Azar Nafisi fought in her own way to separate the two through the use of creative imagination.²³⁶ After being expelled from one university for refusing to wear the veil, Nafisi was forced to resign from another because of her "controversial" subject matter and teaching habits.²³⁷ She then secretly formed a book group with some of her best female students and one male student who were also passionate about reading Western literature.²³⁸ For two

234. SCIOLINO, *supra* note 6, at 265.

235. Azar Nafisi, *Mysterious Connections that Link Us Together*, National Public Radio Morning Edition, July 18, 2005, <http://www.npr.org/templates/story/story.php?storyId=4753976> (last visited Dec. 5, 2007).

236. See NAFISI, *supra* note 11, at 273.

237. See *id.* at 10.

238. Even though Nafisi's book is very popular in the United States and in Europe, Nafisi has been criticized severely by some commentators. They accuse her of not treating the very rich Persian literature that she studied as a child and mastered as a student of world literature. Nafisi's choice of Western literature is viewed, perhaps too harshly, as a "sign" of her political affiliation with the West and her abandonment of the Iranian cause. Nafisi is even linked by some of her critics with the "neo-conservatives" simply because Bernard Lewis admires her book. Some attack her, no doubt, out of

years, “her girls” identified their own struggles, hardships, losses and political disappointments with those of the characters in the books they read, discussed, and interpreted together. In post-Revolutionary Iran, these female readers yearned for personal freedom. They do experience freedom and agency vicariously in the act of reading and interpreting literature, but they are forced to do so in the secrecy of their teacher’s home.

In its very poetic, personal, learned and literary style, *Reading Lolita in Tehran* illustrates the contradictions about women in Iranian society and the human rights abuses they have had to endure since the Revolution. The women in Nafisi’s reading group relate how they have witnessed or personally experienced arbitrary arrests, torture, summary executions without trials, restricted movement within Iran and across borders, degrading body searches, forced religion and religious expression, employment discrimination, limitations on the enjoyment of cultural life, unequal gender treatment by the legal system (especially Iranian family law regarding divorce and child custody), restrictions on women’s freedom of assembly and freedom of expression, all of which are basic human rights violations that are protected under customary international law and international human rights treaties and instruments that Iran has signed and ratified.

1. Narrative Structure of *Reading Lolita in Tehran*

Azar Nafisi is a scholar and a reader of Western literature who identifies certain periods of her own life with various literary works²³⁹ she has taught in Iranian universities. In a first person narrative that creates a sense of authenticity and intimacy with her reader, Nafisi’s memoir takes the reader on a personal journey into her own life through various works of fiction that reveal many of the hidden facets of the legal, social, and political realities the narrator has experienced as an academic in the Islamic Republic of Iran.²⁴⁰ Nafisi juxtaposes the reality of the world of literary fiction and the seeming unreality of life in a changing Iran.²⁴¹ The act of reading and interpreting literature is an escape from an unstable and harsh reality. It is “our moment of pause, our link to that other world of ‘tenderness, brightness and beauty.’”²⁴² “Only eventually, we were compelled to return.”²⁴³

sheer jealousy because she has a comfortable teaching position at a prestigious university in the United States. See Hamid Dabashi, *Native Informers and the Making of the American Empire*, <http://weekly.ahram.org.eg/2006/797/special.htm> (providing a scathing review of Nafisi’s book. Columbia Law Professor Hamid Dabashi’s vitriolic discourse reveals his own personal and political agenda which, in my view, renders his literary critical analysis of Nafisi’s book almost worthless, if not lacking in objectivity.). See *infra* text accompanying notes 338-45 for an analysis of this negative critical commentary on Nafisi’s work, which, in itself, is a sign that needs interpretation and decoding.

239. See NAFISI, *supra* note 11, at 170-71.

240. See *id.* at 168-69.

241. See *id.* at 6.

242. *Id.* at 57.

243. *Id.*

Nafisi shares her private thoughts, hopes and fears with her students and eventually her readers.²⁴⁴ Like Baudelaire, who spoke directly to his readers with whom he identified lovingly and whom he also rejected harshly in an ironic ambivalence—"Hypocrite lecteur, -mon semblable, -mon frère,"²⁴⁵—Nafisi, too, expresses her frustrations with a passive society that tolerates the political and social changes in Iran that detrimentally and unjustly affect her role as a professional woman.²⁴⁶

While working as a professor of literature in the Islamic Republic of Iran, Nafisi admits to despising the indifference of her colleagues and students to the transformations happening in Iran that greatly jeopardize women's well being. She is disgusted with the mindless bureaucracy in the university where less time is spent on intellectual matters and much time is spent on what she considers formalistic trivia.²⁴⁷ At one point Khomeini even closed all the universities for several years in order to weed out his opponents and implement cultural changes. The increasing gap between the public and private life in Iran causes Nafisi to give up her tenured job and choose her private life over the public life.²⁴⁸ She actually gives up her teaching career, which is a form of protest, and invests her efforts in a less visible form of political engagement by teaching only a few handpicked students whom she chooses to see in her home.²⁴⁹ Despite the regime's everlasting goal of blurring the distinction between the public and the private life — a problem that is endemic to the erosion of women's rights in general —²⁵⁰ Nafisi refuses to be completely controlled by the government and secludes herself in her books, her family, her few friends and her girls — her only links to the outside world.²⁵¹

2. Concept of Literature as a Reflection of Reality in *Reading Lolita*

Nafisi focuses on the receivers of the hidden messages contained in books. Her memoir begins with a detailed description of her girls who read and discuss Nabokov's *Lolita*, a highly controversial book that titillates its readers by the daring treatment of such taboo subjects as incest and child molestation. Nafisi encourages the girls to use their imagination while reading and interpreting in order to rise above and beyond the closure and indignities that they suffer every day as women in Iran. She encourages her girls to see in *Lolita* the representation of what the Ayatollah and the Islamists really are. They are men who, like Humbert, actually fear giving women freedom, so they force women to "become the figment

244. See *id.* at 6.

245. CHARLES BAUDELAIRE, LES FLEURS DU MAL 184 (Richard Howard trans., David R. Godine 1982).

246. See NAFISI, *supra* note 11, at 169.

247. See *id.* at 151.

248. See *id.* at 29.

249. See *id.* at 3.

250. See Hilary Charlesworth & Christine Chinkin, *The Gender of Jus Cogens*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT 173, 175 (Henry J. Steiner & Philip Alston eds., 2000).

251. See NAFISI, *supra* note 11, at 47.

of someone else's dreams."²⁵² There is no doubt that Nafisi has always loved literature, but ironically it is the new Islamic Republic and its oppressiveness that gives her greater appreciation for these books and the freedom of thought and expression she finds within them through interpretation.²⁵³

Literature for Nafisi is a means of opening up a closed, suffocating world imposed on her by the new regime in post-Revolutionary Iran. Nafisi adopts an elegant and authorial tone in contrast to the cacophony of this chaotic era²⁵⁴ full of contradiction and paradox where women are given an education only to be forced to remain inside and isolated in the home. Nafisi examines and even dares to criticize this new and dehumanizing regime through the distancing elements of literature and the adoption of an academic and intellectual perspective.²⁵⁵ By focusing attention on the literary words of Western authors, she exposes the complex methods and rationales of the post-Revolutionary Iranian government. She asks her students to consider "how these great works of imagination [can] help us in our present trapped situation as women... [to] find a link between the open spaces the novels provided and the closed ones we [a]re confined to."²⁵⁶

3. Themes in *Lolita*: Women's Loss of Agency, Individuality, and Freedom

In *Lolita*²⁵⁷ Nafisi's girls see parallels between their own vulnerability and the life of Lolita, a very young girl who is systematically but subtly reduced by the power of her own step-father. Shockingly, Humbert has sex with his young adopted daughter, forcing her to become his mistress and to live according to his rules. Like the men in the new regime, Nafisi claims that Humbert controls every aspect of Lolita's life;²⁵⁸ he cares nothing for her happiness or well-being and shifts the blame for any wrongdoing on his part to Lolita.²⁵⁹ Just like Lolita, who lost her freedom to the lustful demands of Humbert, the women in Iran have lost their sense of self.²⁶⁰ The days following the Revolution did not lead to the kind of freedom that the Iranian women who supported the Revolution were promised.²⁶¹ Instead, women were told how to dress, what to think, and they were cut off from the outside 'polluted' world.²⁶² Like Lolita, every aspect of the Iranian woman's life was controlled by the regime.²⁶³ Like Lolita, Iranian women were gradually subsumed under the misogynistic rules of the regime, but unlike Lolita, Iranian women were made anonymous, invisible, indistinguishable, and any trace of

252. *Id.* at 28.

253. *See id.* at 47.

254. *See id.* at 274.

255. *See id.* at 9.

256. *Id.* at 19.

257. VLADIMIR NABOKOV, *LOLITA* (Olympia Press 1955).

258. *See* NAFISI, *supra* note 11, at 33.

259. *See id.* at 42.

260. *See id.* at 38.

261. *See* Halper, *supra* note 17, at 107.

262. *See id.* at 106-12.

263. *See id.* at 106.

personhood, femininity or individuality was erased and replaced by “black-scarved, timid faces”²⁶⁴ that float about two by two like nameless masses of black cloaked matter. Conformity is enforced in Iran by the media that control women’s behavior in society. Subtle forms of indoctrination, threats, and warnings are everywhere; posters shout at the women from the walls of the school corridors and streets, warning them against indecency or revolt.²⁶⁵ Thus, reading *Lolita* is a lesson in the manipulation of women by controlling men who are supported by the patriarchal society.

4. Themes in *The Great Gatsby*: Women in a Black and White Ethos

After *Lolita*, the girls read F. Scott Fitzgerald’s *The Great Gatsby*,²⁶⁶ and with this book, Nafisi transports her readers back to the early days of the Revolution and her teaching career.²⁶⁷ The ambiguous morality and values of *Gatsby* were difficult for many of her now indoctrinated students to grasp.²⁶⁸ Her students were now living in the days of black and white morality touted by the emerging leadership of the Islamic Republic of Iran.²⁶⁹ Nick, the protagonist, was not altogether good, and the other characters also committed major sins, such as adultery, decadence and indecency.²⁷⁰ Students reacted to the potentially negative impact that this kind of literature could have on society and on their own value system. Like Plato who wanted to throw out the poets from the Republic, and the Soviet Communists who rigidly censored their writers and philosophers, the Khomeini regime also struggled with the concept of the role of writers and artists in an Islamist State. The Ayatollah proposed that writers espouse only the ideals of the regime, a similar policy of strict censorship that was implemented quite effectively for eighty years in Communist Russia.²⁷¹ Censorship in the Soviet Union ultimately forced the artists to go underground in order to develop a rich and penetrating literature. Nafisi’s students struggled with the allegorical implications of the novel.²⁷²

Several of the religious students in the class vehemently objected to reading *The Great Gatsby*,²⁷³ claiming that the novel’s characters promoted ambiguous and immoral values as qualities that should be emulated by the readers.²⁷⁴ Nafisi countered this objection by stating that a novel is not meant to be a parallel to, or an “allegory” of, real life, either in the West or in Iran.²⁷⁵ A novel is meant to be:

264. NAFISI, *supra* note 11, at 6.

265. *See id.* at 26-27.

266. F. SCOTT FITZGERALD, *THE GREAT GATSBY* (Charles Scribner’s Sons 1996) (1925).

267. *See* NAFISI, *supra* note 11, at 92.

268. *See id.* at 108.

269. *See id.* at 109.

270. *See id.* at 126.

271. *See id.* at 124.

272. *See id.* at 127.

273. *See id.* at 120.

274. *See id.*

275. *Id.* at 111.

...the sensual experience of another world. If you don't enter that world, hold your breath with the characters and become involved in their destiny, you won't be able to empathize, and empathy is at the heart of the novel. This is how you read a novel: you inhale the experience.²⁷⁶

According to Nafisi, great novels are supposed "to make you feel like a stranger in your own home. [They make us] . . . question what we [take] for granted. . . [and question] traditions and expectations when they [seem] too immutable."²⁷⁷ Despite the advice of the teacher, as the class reads *Gatsby* and fails to understand the concept of 'experiencing' the novel, one of the more radical Muslim students, Mr. Nyazi, claims that the book "poison[s]" the "minds" of the students, and makes them susceptible to follow the immoral example set by the *Gatsby* characters.²⁷⁸ Reading this book, he fears, would make them prone to forget the high-minded ideals of the Revolution.²⁷⁹

In those days of frequent public prosecutions and executions in Iran, Nafisi herself decides to place *Gatsby*, the book, on trial.²⁸⁰ Mr. Nyazi would be the prosecutor, Nafisi would actually be the defendant (*i.e.* the book), a female student would be the defense attorney, and a male student would be the judge in this mock trial.²⁸¹ On the day of the trial, Mr. Nyazi sets forth his scathing allegations against "every page" of the novel – which he claims is full of the ideals of the West that comprise a sinister assault or rape of their culture.²⁸² Nyazi's accusations, that reflect his fear of losing his own Iranian identity to the hegemony of the West, are the prelude to Iran's current fears of "Westoxication" and to young Iranian children being taught in school to say "Death to America."²⁸³ Nyazi concludes that *Gatsby* deserved to die for his actions, as does the whole American society for pursuing such a decadent and immoral dream.²⁸⁴ Here Nafisi seems to foresee the Jihadist discourse that would develop in recent years.

Zarrin, the defense attorney, holds a more liberal position on freedom of speech, stating that to reject a book based on the "morality" and behavior of its characters is to oversimplify the novel and to completely miss the point.²⁸⁵ The revolutionaries in Iran and Fitzgerald's characters have in common an obsessive pursuit of dreams.²⁸⁶ When this obsession for revolution takes over reality, and the pursuit of an impossible dream becomes a mania of the masses, any means

276. *Id.*

277. *Id.* at 94.

278. *Id.* at 120.

279. *See id.*

280. *Id.*

281. *Id.* at 121.

282. *Id.* at 126.

283. *See, e.g.,* SCIOLINO, *supra* note 6, at 3 ("On the day of the government rally, I watched from a street corner as thousands of angry bearded men and black-clad women screamed 'Death to America' and punched the air with their fists. The student unrest had to be blamed on somebody, so why not the United States?").

284. NAFISI, *supra* note 11, at 127.

285. *Id.* at 132.

286. *Id.* at 144.

necessary to accomplish the dream becomes acceptable, even violence.²⁸⁷ Just as Gatsby's dreams were lost in the façade of his reality,²⁸⁸ the dreams of the revolutionaries are lost among the thousands of murdered youths; ghosts of their own ideals.²⁸⁹

5. Henry James' Novels: Existential Courage of Conviction Even If It Means Inevitable Defeat

Nafisi points out that the days of the Iran-Iraq War left the citizens of both countries in a state of financial, structural, emotional, and intellectual ruin.²⁹⁰ The government of Iran was forced to maintain strict control over its citizens in order to pursue the war.²⁹¹ Nafisi discusses the details of these repressive days in Iran through the lens of different works by Henry James.²⁹²

In the years following the Revolution, Nafisi observed her students gradually becoming acculturated into blind acceptance of the mandates of the regime.²⁹³ They were told what to think, how to act, what to wear, and how to live.²⁹⁴ Their personal narratives had been confiscated by the government, leaving them with no hope to think and form opinions for themselves.²⁹⁵ Dissent was rarely an option for students or women after the Revolution, and when a dissenting voice rose up, this revolt was met with grave consequences, even death.²⁹⁶ Nafisi paints a rather grim picture of women in post-Revolutionary Iran who are reduced to subservience and silence. There is little evidence of women in revolt in Nafisi's book. Nevertheless, women did make some progress during this wartime period in achieving certain rights that they demanded and received because women were Khomeini's much needed constituency. Shirin Ebadi, Ziba Mir-Hosseini and others report the existence of an emerging feminist movement, feminist protest marches, and an attempt to make change for women by women in Iran.

As if attempting to encourage a nascent feminist movement in this oppressive environment, Nafisi introduces such courageous Jamesian characters as Daisy, from *Daisy Miller*, and Catherine from *Washington Square*. Once again, Nafisi's post-Revolutionary students are unsure of what to think of the ambiguously immoral protagonists in Jamesian's novels²⁹⁷ because they have been indoctrinated into an absolutist system of morality. Nafisi wants her girls to see and understand the courage of the Jamesian characters that face up to unpleasant circumstances without wavering, even if they encounter bad consequences. Nafisi wants her

287. *Id.*

288. *See id.*

289. *See id.* at 153.

290. *See id.* at 239.

291. *See id.* at 158-59.

292. *See id.* at 186-90.

293. *See id.* at 199-200.

294. *See id.* at 288.

295. *See id.* at 221.

296. *See id.* at 275-76.

297. *Id.* at 196.

students to see the value of courage which is the quality that makes these characters so admirable.²⁹⁸ Even if these characters do not gain happiness in their existential effort, they do gain “self-respect.”²⁹⁹

During wartime, basic human rights like freedom of speech are sometimes denied in the name of national security. During the Iran-Iraq war, critics of the Iranian government or its policies were deemed “Iraqi-inspired and dangerous to national security” and doomed to severe consequences.³⁰⁰ Intellectuals were reduced to silence or forced to become either revolutionaries or hermits, such as Nafisi’s “magician” and her friend Mina, who were compelled to retire from public life and seclude themselves with their books and their “dashed dreams.”³⁰¹ The regime turned people into “perfectly equipped failure[s],” who had to sacrifice their public lives for their sense of integrity.³⁰² Although tempted to retire into seclusion, as many of her academic friends had done in order to preserve their idealism, Nafisi is persuaded to return to teaching for the sake of her students – in order to teach them to think and to feel,³⁰³ and to live the existential life of courageous action in the face of inevitable defeat.

Nafisi reads Henry James in order to find courage in her changing world of utter absurdity. “[T]he most courageous characters [in James’ works] are those with imagination” and empathy.³⁰⁴ Merely to exist, to live only as the regime insisted they must, is not enough for Nafisi.³⁰⁵ She wants her students to think, to feel, to experience a full life outside of what the government tells them life was supposed to mean.³⁰⁶ As James writes in *The Ambassadors*, “Live all you can; it’s a mistake not to. It doesn’t so much matter what you do in particular so long as you have your life. ... Live, live!”³⁰⁷ James also writes in a letter to a friend,

Feel, feel, I say—feel for all you’re worth, and even if it half kills you, for that is the only way to live, especially to live at this terrible pressure, and the only way to honour and celebrate these admirable beings who are our pride and our inspiration.³⁰⁸

Nafisi adopts the philosophy of her existential brothers like Camus and Sartre. By living life fully, and trying to fight the impossible battle (like Sisyphus who was forced to roll the big rock up a hill only to see it roll down again every day of his life) any and all attempts to fight against the absurd make life worth living, even though defeat may be inevitable. The women in post-Revolutionary Iran must fight

298. See *id.* at 224-25.

299. *Id.* at 225.

300. *Id.* at 158.

301. *Id.* at 204.

302. *Id.* at 202.

303. *Id.* at 215.

304. *Id.* at 249.

305. See *id.* at 215.

306. See *id.*

307. *Id.* at 247.

308. *Id.* at 215.

against tyranny and oppression, even though they may lose the battle. But life in this misogynistic regime is not worth living without trying. By engaging in imagination, feelings, and thought about the great books, her girls could thwart any attempt the government made “to eliminat[e] the personal [and the] private.”³⁰⁹

6. Jane Austen’s Works: Freedom from Women’s Human Rights Abuses

Through the works of the great ironist, Jane Austen, Nafisi sheds light on basic women’s rights issues in Iran such as systematic abuse of children and forced marriages. “[I]t’s a truth universally acknowledged that a Muslim man, regardless of his fortune, must be in want of a nine-year-old virgin wife.”³¹⁰ To Nafisi and her girls, the concepts of arranged marriages,³¹¹ family courts that frequently side with men,³¹² and harsh parental control over daughters seem to be outdated ideas from the days of Jane Austen.³¹³ But these traditions were all brought back and imposed upon women in modern-day Iran with the advent of the Islamic Republic³¹⁴ and the establishment of *Shari’a* law.

Austen’s works revolve around the search for individual freedom by her heroines who struggle against overbearing parents, societal pressure to marry a “suitable” man, monetary pressures, and the desire by women to find true love and happiness in their own lives.³¹⁵ Like the women in post- Revolutionary Iran who were subjected to the chaos of ten years of war, the women in the world in which Jane Austen lived were caught up in the Napoleonic wars.³¹⁶ Like Nafisi, who some blame for not being politically engaged because she uses books as a mere form of escape from reality, Jane Austen went even farther and refused to address the war or become involved in the politics of her time.³¹⁷ Instead, she “created her own independent world” of characters from her imagination, thereby allowing herself to escape from the society in which she lived through fiction.³¹⁸ This was Austen’s form of engagement, her own form of revolt. Like Austin, Nafisi and her girls refuse to give up their imagination or their right to pursue personal happiness.³¹⁹ This refusal is a form of resistance against oppression because refusal alters the regime’s ability to control women or to make them conform to the fantasy world of moral perfection that it had created.³²⁰

309. *Id.* at 237.

310. *Id.* at 260.

311. *Id.* at 258.

312. *Id.* at 273.

313. *Id.* at 258.

314. *Id.*

315. *See id.* at 262.

316. *Id.* at 282.

317. *See id.*

318. *Id.*

319. *See, e.g., id.* at 283-84 (describing female experiences with marriage through one special character’s excitement at the prospect of marriage).

320. *See id.* at 282.

Nafisi admittedly was tempted to blame all of the problems faced by her girls on the Islamic Republic.³²¹ For example, it would be easy to claim that Sanaz was jilted by her fiancé because the regime had forced her to become the kind of woman that he was no longer interested in marrying.³²² Similarly, it would be easy to claim that Azin was a victim of her abusive husband and a family court system that was prejudiced against women.³²³ It would be easy to claim that the incredibly intelligent and talented Mahshid could not advance in her job simply because her fundamentalist employer was suspicious of her political past.³²⁴ The girls searched for happiness, fulfillment and love in a new world in which sex or any form of intimacy with a man is evil.³²⁵ In Iran, women are marginalized and mistrusted, and at times “don’t know what it means to love.”³²⁶ The girls learn that the cruelties and misogyny they experience around them these days are not just due to the brainwashing and extreme cruelties of the new regime. Sadly, they learn that male misogyny is deeply engrained and commonplace in Iran, even prevalent in the mentality of the ordinary people who have been indoctrinated by the regime.³²⁷

According to Nafisi the new government seeks obedience through uniformity and dehumanizing conformity. Thus, the true evil of the Islamic Republic is its blindness to the individuality of its citizens. Iran for Nafisi is like the blind film censor, “imposing [its] visions and desires on others.”³²⁸ “How does the soul survive? is the essential question. And the response is: through love and imagination.”³²⁹

Nafisi tries to show that using one’s imagination through a study of great works is a form of political engagement and a legitimate form of revolt against conformity and dehumanization. It is not without good reason that Nafisi quotes one of her favorite authors, Saul Bellow, who valorizes the political power of words and the use of poetic language in times of crisis:

Perhaps to remain a poet in such circumstances... is also to *reach the heart of politics*. The human feelings, human experiences, the human form and face, recover their proper place—the foreground.³³⁰

321. *Id.* at 278.

322. *See id.* at 279-80.

323. *See id.* at 272-73.

324. *Id.* at 270.

325. *See id.* at 302.

326. *Id.* at 323.

327. *See id.* at 315.

328. *Id.*

329. *Id.*

330. *Id.* (emphasis added).

7. Literary Critics on *Reading Lolita in Tehran*:

a. Positive Assessments of the Book as Signs of Women's Human Rights Struggle

Reading Lolita has been at the top of the bestseller lists and a favorite among American book clubs.³³¹ Nafisi has also received high praise from literary critics.³³² What does this generally positive assessment of the book actually signify? No doubt readers appreciate the beauty of her style, the contagious excitement Nafisi finds in uncovering different interpretations of works in the canon of Western literature, and the activism she encourages through the interpretive process.

But many critics are stumped by the genre of this text: – is it an autobiography, a literary critique, or a political commentary?³³³ In truth, it is all of these, which explains its broad appeal. Although most Americans, especially women, can not really identify personally with the abuses that Nafisi or her girls endure, Nafisi urges each reader to use his imagination, and to empathize with Nafisi's longing to be free from the restrictions of a theocracy under the totalitarian Islamic Republic of Iran. Nafisi's work reveals the various devastating effects of human rights violations on women from different social strata in Iran and on readers from outside the regime.

Susan Sontag, a well-respected writer, philosopher, and literary critic enjoyed Nafisi's book. In her critical review of the book, Sontag recognizes that teaching, reading, writing and interpreting books do play an active role in revolting against tyranny and oppression of women. Sontag writes:

I was enthralled and moved by Azar Nafisi's account of how she defied, and helped others to defy, radical Islam's war against women. Her memoir contains important and properly complex reflections about the ravages of theocracy, about thoughtfulness, and about the ordeals of freedom—as well as a stirring account of the pleasures and deepening of consciousness that result from an encounter with great literature and with an inspired teacher.³³⁴

Mona Simpson, in *The Atlantic Monthly*, writes:

There are certain books ... [that] carry inside their covers the heat and struggle of a life's central choice being made and the price being paid,

331. See, e.g., *Paperback Bestsellers: Paperback Nonfiction*, N.Y. TIMES BOOK REV., Aug. 6, 2006, at 24.

332. See, e.g., Michiko Kakutani, *Books of The Times; Book Study as Insubordination Under the Mullahs*, N.Y. TIMES, Apr. 15, 2003, at E6.

333. See Margaret Atwood, *A Book Lover's Tale: A Literary Life Raft on Iran's Fundamentalist Sea*, AMNESTY MAG., Fall 2003, available at <http://www.amnestyusa.org/amnestynow/lolita.html>.

334. NAFISI, *supra* note 11, at iii.

while the writer tells us about other matters, and leaves behind a path of sadness and sparkling loss. *Reading Lolita in Tehran* is such a book.³³⁵

In an Amnesty International review, Margaret Atwood recognizes the tyranny of the Islamic regime in Iran and the effect this governmental regulation has on women who virtually become invisible to the public eye:

Reading Lolita provides us with a chilling account of what it feels like to live under such conditions: the heaviness, the constant weighing down – which is what we mean by “oppression” – and at the same time a lightness, a sense of unreality – They can’t be doing this! – and a feeling that one is becoming both invisible and fictional. Nafisi’s reading group paid so much attention to Nabokov partly.... because they saw, in the fate of the defenseless Lolita at the hands of Humbert, their own position reflected. Lolita was turned into a fantasy object, just as every woman in Iran had become a fantasy object for the regime – a regime that wanted to censor all narratives but its own....³³⁶

Reading, writing, and discussing literature and its multiple interpretations are acts of escape and liberation that explain the attraction of this incredibly popular memoir: “*Reading Lolita in Tehran* is both a fascinating account at how [Azar Nafisi] arrived at th[e] belief [in freedom of imagination], and a stunning vindication of it.”³³⁷

b. Negative Assessments of Reading Lolita: Signs of Women’s Human Rights Abuses in Iran

The negative assessments of Nafisi’s book are elements of the semiotic system and signs of underlying issues in women’s rights abuses in Iran. I have been told by several women in Iran³³⁸ that *Reading Lolita* is not a popular book there. Critics attack the book for its failure to recognize the value of Persian literature and Nafisi’s unwarranted emphasis on Western classics in an era when “postcolonial, black and Third World feminists, scholars and activists [have] finally succeeded to introduce a modicum of attention to world literatures.”³³⁹ They criticize the book because Nafisi herself came from a socially privileged class and is a secular woman, not a practicing devout Muslim. Without being a human rights activist or

335. Mona Simpson, *Book Group in Chadors*, ATLANTIC MONTHLY, June 2003, available at <http://www.theatlantic.com/doc/200306/simpson>.

336. Atwood, *supra* note 333.

337. *Id.*

338. See, e.g., Anicee Van Engeland, Iranian People’s Criticism on Azar Nafisi’s *Reading Lolita* (Aug. 9, 2006) (unpublished, on file with author, Susan Tiefenbrun) (Fr.). Much of this subsection comes from this excellent unpublished essay.

339. Hamid Dabashi, *Native Informers and the Making of the American Empire*, AL-AHRAM WEEKLY, June 1-7, 2006, available at <http://weekly.ahram.org.eg/2006/797/special.htm>.

lawyer herself, like Shirin Ebadi, Nafisi does reveal serious women's human rights violations in Iran such as forced marriage, the very young age of women forced to marry, divorce inequities, the loss of professorial academic freedom, purges, censorship, the limited or lost access of many books, and the show trials of professors and others who opposed the regime.

Some critics point to historic and cultural errors in the book like the claim that there were communists in Iran in the middle of 1979. Apparently, most if not all communists were virtually eradicated by Khomeini. Similarly, some object to Nafisi's claim that the marriage age for women is nine, despite the fact that marriage of young women in Iran at the age of nine is a rare phenomenon today, as is stoning. Nafisi attacks forced marriage as an unwanted cultural phenomenon, and yet historically many women desired to have an arranged marriage after the war. Some claim that Nafisi's insistence on the rapes of virgins in prisons is pure rumor and myth.

Nafisi is accused of seeing Iran through the eyes of an upper class privileged person who does not live in reality. It is probably that some of these critics are jealous and have a political predisposition against Nafisi who now lives comfortably and freely in the United States and is very successful. To them, her book represents what the wearing of Western garb symbolizes to Iranian traditionalists: a rejection of Iranian/Muslim identity and a preference for Western civilization and its alleged corruption.

Hamid Dabashi published a very negative critique of Nafisi's book in *Al-Ahram Weekly*.³⁴⁰ In a highly politicized and polemical discourse pitching East against West, Dabashi states that Nafisi's book has achieved three objectives: "(1) systematically and unfailingly denigrating an entire culture of revolutionary resistance to a history of savage colonialism; (2) doing so by blatantly advancing the presumed cultural foregrounding of a *predatory empire* and (3) while at the very same time catering to the most retrograde and reactionary forces within the United States, waging an all out war against a pride of place by various immigrant communities and racialised minorities seeking curricular recognition on university campuses and in the American society at large."³⁴¹

The language of this reviewer's scathing critique of Nafisi's book reveals a clear political agenda. His vitriolic anti-Americanism blurs his objectivity and prevents him from analyzing and interpreting the book for what the words actually say and mean. He prefers to use hyperbolic language, exaggerations, and generalizations to persuade his readers, couching his commentary in politically-coded phrases like "US imperial designs," "an American empire," and referring to the US as a "predatory empire." He accuses Nafisi and her book of being "partially responsible for cultivating the US (and by extension the global) public opinion against Iran," He demonizes Nafisi and the book's "unfailing hatred of everything Iranian—from its literary masterpieces to its ordinary people."³⁴²

340. *Id.*

341. *Id.* (emphasis added).

342. *Id.*

He attacks Nafisi based on guilt by association and is outraged simply because Bernard Lewis endorses the book. He resorts to calling Lewis bad names “the most wicked ideologue of the US war on Muslims.”³⁴³ While admitting that oppression of women exists under Muslim laws, he accuses Nafisi of denigrating Iranian and Islamic literary cultures and feminist movements, claiming a “collective amnesia of historical facts surrounding successive US imperial moves for global domination...”³⁴⁴ The author of this review actually admits to linking Azar Nafisi with the “US leaders of the neo-conservative movement” and claims that Nafisi engages in “a systematic deprecation of Iranian culture, and by extension local and regional cultures of actual or potential resistance to the US empire, glorifying instead a canonized inner sanctum for an iconic celebration of “Western literature”...placing her squarely at the service of the predatory US empire.”³⁴⁵ This review continuously spews venom at Nafisi and at the United States by referring to the US more than several times as a “predatory empire.”

I understand that for some, this type of negative criticism may be an understandable expression of sensitivity to a perceived disregard for Persian culture and literature in a time when upheaval and fragmentation have been particularly acute. Nevertheless, literary critical responses that are fraught with political prejudices have limited value. This brand of literary criticism is disreputable because it is blinded by cultural hatred and corrupted by a political agenda and by an outdated 1980's disdain of the Western literary canon and the “Euro-centricity of the literary imagination.” This kind of literary criticism is unacceptable because it fails to illuminate the text and fails, by its subjectivity and prejudices, to understand the multiplicity of hidden meanings that only an objective analysis of the words, the signs, and the symbols of the text itself can reveal.

This kind of critical commentary could be construed as a metaphor of the compulsory *hejab* itself. Just as Dabashi misreads Nafisi and misinterprets her messages because the reader/reviewer is himself blinded by a fanatical political agenda, the Islamic State justifies its strict regulation of women's garb on grounds of religious conservative traditionalism and even more suspiciously, if not paradoxically, on grounds of women's liberation. This kind of critical commentary and governmental justification is a cover up and a covert attempt to proselytize more important political goals. To the Islamic rulers the *hejab* is a symbol of the rejection of Western hegemony, Western civilization, and a valorization of Muslim identity. The fact that only women are required to be bearers of this symbol of identity is unfair, just as Dabashi's commentary is unfair.

343. *Id.*

344. *Id.*

345. *Id.*

B. Shirin Ebadi's, Iran Awakening: A Lawyer's Look at Women's Human Rights in Iran

Shirin Ebadi is an Iranian woman who never left Iran and has no intentions of leaving. She recounts her personal life story in a memoir that, like Azar Nafisi's book, reveals the personal plight of a professional woman in post-Revolutionary Iran. Nafisi's writing style reflects her immersion in literature and scholarship. Shirin Ebadi writes with the clear and persuasive skills of a lawyer. Both are Iranian women who recognize the need to provide more opportunities and equal rights for women in Iran, but Nafisi left Iran early in her life and was educated in Switzerland, while Ebadi remained in Iran to fight for equal rights and fairness from within the system. Nafisi drinks endless cups of coffee, the proverbial Western European and American drink, and Ebadi drinks endless cups of tea, the Eastern and Iranian drink. This taste preference for tea or coffee is an important sign that points to a significant difference in the perspective of both women writers.

Ebadi is a woman, like all women, who must juggle many responsible roles in life. She was the first female judge in the Iranian high court and was forced to resign simply because she is a woman. She is now a lawyer, a writer, a human rights activist, a devoted daughter, a mother of two beloved daughters, a wife, and a courageous dissident. Ebadi was arrested, jailed, and eventually won the Nobel Peace Prize in 2003. Like Nafisi, she supported the Revolution at first but later felt betrayed by it:

I felt that I too had won, alongside this victorious revolution. It took scarcely a month for me to realize that, in fact, I had willingly and enthusiastically participated in my own demise. I was a woman, and this revolution's victory demanded my defeat.³⁴⁶

After the Revolution, "public space... became fraught with uncertainty. [Women] simply did not know where, at what hour, and under what pretext you might be harassed, and often the confrontations with the *komiteh* [morality police] turned alarming."³⁴⁷ After the Revolution Ebadi, herself, was arrested and imprisoned in Evin where "[w]omen who are arrested ... after dark are typically prostitutes"³⁴⁸ and where prison conditions are appalling.³⁴⁹ Like Nafisi, and despite her humiliation and fears, Ebadi writes about her prison experience in a very poetic style, revealing her deeply emotional state of mind and her profound understanding of the power of literature as a vehicle of liberation and escape:

346. EBADI, *supra* note 24, at 38.

347. *Id.* at 103.

348. *Id.* at 164.

349. *See id.* ("The best cell was covered in filth, and the sink had no running water. Dirt and rust rimmed the metal toilet in the corner."). *See also id.* at 168 ("Torture there was rampant.")

Ten more days in prison. Ten more days of clanking breakfast trays, of sullen guards smoking and despising me for a oneness that required the supervision of their four. Ten more days of trying to imagine the gentle, rocky slope of the Alborz Mountains behind Evin, where my poet friend Simin Behbahani and I hiked each week, talking languorously while we scaled the mountain, as teenagers scampered past us with their boom boxes and jaunty bandannas. . . . Simin and I are kindred spirits, and many of the themes of her poetry—women's suffering, the celebration of their rights and existence—inspire my own work. I tried to force more hours to pass by remembering lines of her *ghazals*. The images came, of monsters soaring the sky in trails of smoke, of plundered mermaids.³⁵⁰

The Khomeini regime understood the power of literature and systematically arrested and tortured writers in Iran.³⁵¹ Ebadi sadly recognizes that there is no freedom for writers, journalists or activists in Iran.³⁵²

Shirin Ebadi has been harassed and has experienced several assassination attempts³⁵³ and the constant humiliation of her family in order to pursue her dream of a democratic Iran. On the day she came to San Diego to deliver her speech at the Kroc Peace and Justice Center, I had the privilege of interviewing her personally. She admitted in a taped interview that just before her departure to the United States, she received a threatening letter from the Iranian government telling her not to pursue her political agenda.

Ebadi understands that the "headscarf" has many meanings. She admits that "[t]he headscarf 'invitation' was the first warning that this revolution might eat its sisters, which was what women called one another while agitating for the shah's overthrow."³⁵⁴ Like Nafisi, Ebadi felt betrayed by the revolutionaries who believed that "[i]n their hierarchy of priorities, women's rights would forever come last. It was simply never the right time to defend women's rights."³⁵⁵

Between the lines of her book, Ebadi reveals her incredible courage, her determination, her modesty, and her delightful sense of humor in the midst of a rather grim picture of Iran today. She never gives up hope, even though she recognizes the failure of the Iranian judicial system that lacks accountability, shows unfair preference for men,³⁵⁶ suffers from "rampant impunity, disregard for

350. *Id.* at 171-72.

351. *See, e.g., id.* at 177 (mentioning the case of the young poet Ezzat Ebrahimnezhad who was shot by paramilitaries).

352. *See id.* at 189.

353. *See id.* at xv (referring to a "transcript of a conversation between a government minister and a members of the death squad," Ebadi writes: "I blinked once, but it stared back at me from the page: 'The next person to be killed is Shirin Ebadi.' Me.")

354. *Id.* at 39.

355. *Id.* at 56.

356. *See id.* at 51 ("The drafters of the penal code had apparently consulted the seventh century for legal advice. The laws, in short, turned the clock back fourteen hundred years, to the early days of Islam's spread, the days when stoning women for adultery and chopping off the hands of thieves were considered appropriate sentences.")

fundamental constitutional rights, manipulation of the law to promote a political agenda, systematic use of torture, and above all, abuse of judicial powers to repress peaceful expressions of dissent and criticism.”³⁵⁷ Ebadi is chronicler, a troubadour who sings to women and the world about critical current events that are bound to become legends. She writes articles in magazines³⁵⁸ and books that become best sellers in order to let women in Iran know that their legal system discriminates against them and that women have an “inferior status in the [Iranian] penal code.”³⁵⁹ For example, in a vivid and gripping style she writes that there is a “section of the [penal] code devoted to blood money, *diyeh*, [which] holds that if a man suffers an injury that damages his testicles, he is entitled to compensation equal to a woman’s life.”³⁶⁰ Ebadi, questioning the significance of these provisions, asks “Is this really how the Islamic Republic regards its women?”³⁶¹ This language in the penal code is a sign of “how the Islamic Republic regards its women.”³⁶²

Ebadi does recognize that the Islamic State has educated women from the provinces for the first time, but this right to education has resulted in major tension within families. Legal rights cannot be implemented effectively if the culture of society has not yet caught up with the intent of the legislation. Ebadi recounts a story where an Iranian father refused to send his daughter to school, even though men and women were segregated in the universities, because the father felt the need to defend her virtue and, thereby, his own honor.³⁶³ This hypothetical situation is represented most vividly in the movie *Two Women* where one father yanks his brilliant daughter out of the university simply because he learns that she is being stalked by a man on a bicycle.

Even though there are currently more women in universities in Iran than men,³⁶⁴ laws affecting women are discriminatory and inadequate. Marriage laws in Iran allow the man to remain a “person” and the woman becomes “chattel.”³⁶⁵ The man has a right to divorce the woman at whim, take custody of the children³⁶⁶ (even if the father abuses the child), and acquire three wives who live together with the first wife.³⁶⁷ Ebadi recognizes that one of the most serious problems in Iran is the inadequacy of the laws themselves³⁶⁸ and the failure to enforce protective women’s rights laws.

357. Hadi Ghaemi, Op-Ed., *For Iran, the Man Is the Message*, INT’L HERALD TRIB., June 30, 2006, at 6.

358. See EBADI, *supra* note 24, at 117.

359. *Id.*

360. *Id.*

361. *Id.*

362. *Id.*

363. See *id.* at 106-07.

364. See *id.* at 107.

365. *Id.* at 53.

366. *Id.* at 123.

367. *Id.* at 53.

368. See *id.* at 111 (“I had to choose cases, I realized, that illustrated the tragic repercussions of the theocracy’s legal discrimination against women. I could recite a litany of objectionable laws—a woman’s life is worth half as much as a man’s, child custody after infancy goes automatically to the

1. The Power of Interpretation

Ebadi's hope for the future of Iran lay in the power of interpretation. She recognizes the need to adopt a more dynamic interpretation of the Koran in order to protect and provide equal rights for women. She believes that "a basic right for women could be guaranteed within an Islamic framework of governance, provided those in government were inclined to interpret the faith in the spirit of equality."³⁶⁹

Ebadi reminds us that:

In Islam, there exists a tradition of intellectual interpretation and innovation known as *ijtihad*, practiced by jurists and clerics over the centuries to debate the meaning of Koranic teachings as well as their application to modern ideas and situations. Sunni Islam effectively closed the door to *ijtihad* several centuries back, but in Shia Islam, the process and spirit of *ijtihad* thrive. *Ijtihad* is central to Islamic law, because [*Shari'a*] is more a set of principles than a codified set of rules.³⁷⁰

Ijtihad "imposes flexibility on Islamic law and creates an exciting space for adapting Islamic values and traditions to [women's] lives in the modern world."³⁷¹ But *ijtihad* can be burdensome because it lets clerics and jurists debate and interpret the Koranic teachings for an endless period of time. "An interpretation of Islam" must be "in harmony with equality and democracy."³⁷²

2. The Power of Words

Shirin Ebadi believes in the power of the written word and its ability to free women from tyranny in Iran.

[T]he written word is the most powerful tool we have to protect ourselves, both from the tyrants of the day and from our own traditions. Whether it is the storyteller of the legend Scheherazade, staving off beheading by spinning a thousand and one tales, feminist poets of the last century who challenged the culture's perception of women through verse, or lawyers like me, who defend the powerless in courts, Iranian women have for centuries relied on words to transform reality.³⁷³

father.... To attract people's attention, to solicit their sympathies and convince them that these laws were not simply unfair but actively pathological, I had to tell stories.").

369. *Id.* at 190-91.

370. *Id.* at 191.

371. *Id.*

372. *Id.*

373. *Id.* at 209.

3. Americans Must Keep Out of Iran and its Fight for Women's Human Rights

Ebadi firmly believes that change for Iranian women is possible, but it must come peacefully from within the system³⁷⁴ with no help from foreign countries.³⁷⁵ There are signs of a feminist movement now in Iran, whereas during the 1990's women were "not yet organized" in a feminist movement, although they were working to change" women's rights in the Islamist State of Iran.³⁷⁶ The conditions for women in Iran are deplorable. Many women commit suicide, or become suicide bombers, preferring to die as martyrs rather than live lives of contradiction and paradox in a community that does not treat them fairly or equally. "The suicide rate among women rose after the Islamic Revolution, commonly taking the form of self-immolation. This tragic exhibitionism...is women's way of forcing their community to confront the cruelty of their oppression."³⁷⁷ Today Iran has the third highest rate of self-immolation after India.³⁷⁸ Suicide and self-immolations are signs of women's oppression. Protest and revolt are met with harsh responses. Any attempt to protest by the great number of unhappy young people in Iran or by the highly educated women in universities is crushed with typical brutality, especially if America supports the protest.³⁷⁹ "Public American support for any pro-democracy phenomenon in Iran, whether from an individual or a trend or a demonstration, always provoked the Islamic system's ire and generally resulted in an even harsher crackdown."³⁸⁰

Shirin Ebadi abhors Iran's "patriarchy" and speaks out vocally against the oppression of the conservative rulers who have stripped women of their basic human rights and their political and social freedom. She clearly advocates sovereignty for Iran and a "hands off foreign policy" for America *vis a vis* Iran.³⁸¹ She admits her anger at the United States and its CIA for assisting in the removal of Mossadegh, whom she greatly admired.³⁸² In her moving speech at the Kroc Peace and Justice Center in San Diego on September 7, 2006, she implored the United

374. *Id.* at 204.

375. Ziba Mir-Hosseini, *Muslim Women's Quest for Equality: Between Islamic Law and Feminism*, 32 CRITICAL INQUIRY 629, 645 (2006) [hereinafter Mir-Hosseini, *Women's Quest*] (describing Mir-Hosseini's views shared by many feminists that the United States should not involve itself in Iran's internal problems, "especially in the context of the neo-imperialist war on terror, which many Muslims perceive to be directed against them once again. Such a perception—whether justified or not—not only puts them on the defensive and makes them more likely to cling to religious tradition; it also erodes the credibility and moral high ground of secular and Western discourses.").

376. EBADI, *supra* note 24, at 125.

377. *Id.* at 109.

378. These statistics were reported on the radio station KPBS, a San Diego public radio, at 7:00 am Pacific Time on January 10, 2007.

379. EBADI, *supra* note 24, at 195.

380. *Id.*

381. See Shirin Ebadi Lecture/Interview, *supra* note 47, at 14.

382. See *id.* at 5 ("It was a profoundly humiliating moment for Iranians, who watched the United States intervene in their politics as if their country were some annexed backwater, its leader to be installed or deposed at the whim of an American president and his CIA advisors.").

States to keep out of Iran. "We will not allow Iran to turn into another Iraq," she said.³⁸³

4. Iran's Esthetic of Death

Ebadi describes her modest beginnings in a Teheran family that had no power to put her in high places.³⁸⁴ Ebadi had to build her own career by herself, by her own determination, intelligence and hard work.³⁸⁵ She believed in the ideals of the 1979 Revolution and was as disillusioned as Nafisi with the direction that Iran has since taken under the hard-line clerics and their strict interpretation of the Koran.³⁸⁶ After the Revolution and during the Iran-Iraqi war, Ebadi spoke of the number of "secret show trials" and public executions,³⁸⁷ arrests, and torture in prison.³⁸⁸ Ebadi and women in general felt betrayed by Khomeini and also by the West because of its support for Saddam and Iraq.³⁸⁹ But she concedes that "[i]f we admitted to ourselves that the revolution had been betrayed, we would surely lose the war."³⁹⁰ Iran's Revolution and the Iran-Iraqi war produced a frightening "cult of martyrdom... that gloried human sacrifice in the name of Islam."³⁹¹ The "engorged enthusiasm for martyrdom and the aesthetic of death"³⁹² that Ebadi and all the women around her observed in Iran did not feel alien or excessive to them because "everything—public space, rituals, résumés, newspapers, television—became dominated by death, mourning and grief."³⁹³

5. Patriarchy in Iran and Male-Child Preference

Women's role in Iranian society is conditioned by a widespread cultural preference for male children. This preference is one of the main causes of the establishment and continuation of a troublesome patriarchy in Iran, the persistence of women's low self-esteem, and their social and economic dependence on males for survival. Ebadi understands that in Iran male children are preferred, even though in her own family she was lucky enough to be treated equally with her brother.³⁹⁴

383. Shirin Ebadi Lecture/Interview, *supra* note 47, at 39.

384. *See id.* at 14.

385. *See id.*

386. *See id.*

387. EBADI, *supra* note 24, at 59.

388. *Id.* at 69.

389. *Id.* at 61 ("Freshly wounded by a violent revolution, we put aside our grievances and betrayal. Those images marching across the television every night inflamed our nationalism. My heart cracked for our young men, setting out for Saddam's killing fields with their shoddy weapons, no match for a dictator armed with the latest from the West's arms boutiques.").

390. *Id.* at 60.

391. *Id.* at 61.

392. *Id.* at 62.

393. *Id.*

394. *Id.* at 11.

In most Iranian households, male children enjoyed an exalted status, spoiled and cosseted by a coterie of aunt and female relatives. They often felt themselves the center of the family's orbit.... As children grew older, the boys' privileges—from running about the neighborhood to consorting with a range of friends—expanded, while the girls' contracted, to ensure that they remain *najeeb*, honorable and well-bred. In Iranian culture, it was considered natural for fathers to love their sons more; the sons are the repository for the family's future ambitions; affection for a son was an investment.³⁹⁵

Ebadi admits that her own upbringing spared her “from the low self-esteem and learned dependence that [she] observed in women reared in more traditional homes.”³⁹⁶

Shirin Ebadi's book breathes life into the cult of death that permeates the Iranian society today, and she brings a message of hope for women in her belief in the power of words and in the liberating effects of interpretation; the message of semiotics.

*C. Ziba Mir-Hosseini's Documentary Film, Divorce Iranian Style*³⁹⁷

Women in Iran today revolt against oppression through the medium of art. Filmmakers, journalists, and writers abound in Iran despite its policy of censorship. Artists attempt to reveal the injustices imposed upon women in Iran in the name of religious tradition. For instance, Ziba Mir-Hosseini's extraordinary film addresses the inadequacy of the Iranian legal system, especially its family court and divorce laws. Mir-Hosseini is an Iranian woman, an independent consultant, a researcher and writer on Middle Eastern issues, specializing in gender, family relations, Islamic law and development. She is a social anthropologist who earned her Ph.D. in social anthropology from the University of Cambridge. She lives in Britain and has held numerous prestigious research and visiting fellowships and professorships in the United States. She was herself twice divorced and understands profoundly the divorce proceedings in Iran. She co-directed an important documentary film that illuminates the vagaries of the Iranian system of divorce, the Iranian family court and how the legal system and culture in Iran affect women's rights.

Divorce Iranian Style was produced with the cooperation of the Ministries of Justice and of Islamic Guidance in Iran. It provides a clear picture of the bureaucracy of the legal system, the litany of allegedly “lost files,” in the court, the mean-spirited nature of the male judges and the female clerks of the court, and the male-driven nature of the judicial system where judges are predisposed not to grant

395. *Id.*

396. *Id.* at 12.

397. See *DIVORCE IRANIAN STYLE*, *supra* note 110. A copy of the DVD of this film can be obtained from Women Make Movies (www.wmm.com). The statement in this section, which refers to the movie, is supported by the author's review of the movie.

a divorce to the woman. The few female clerks in the courts are deeply indoctrinated in the patriarchal system that openly favors men. The whole judicial system in Iran is highly politicized, and there is no guarantee of due process or independence of judges.

Mir-Hosseini's film takes place in a tiny, overcrowded and messy Tehran courtroom presided by a judge wearing a white turban. The goal of the judge is to persuade couples in dispute to save the marriage because in the eyes of God divorce is shameful and abominable. Women come into this court to plead for a divorce, and they use every form of persuasion available: yelling, screaming, threatening, smiling, flirting, charming, deceiving, applying logic, reason and legal argument, but all to no avail. One woman tries to convince the prejudiced judge that her husband is mad and abusive: "This man has made my life hell," and she claims he refuses to let her answer the phone even if it rings a hundred times. The judge's response to this testimony is to tell the woman to go back home and make herself more beautiful for her husband so she can get from him what she wants and needs.

Another woman, who was forced by her family at the age of fourteen to marry a man she does not love, seeks a divorce and her \$10,000 *mehriyeh* (a kind of dowry or marriage gift given by the husband to the wife and pledged at the time of marriage in case of divorce) on the theory that her virginity was taken from her and that she has the legal right to the marriage gift. After she goes to court, she also argues her case before a group of family members in a kind of arbitration setting in the living room of a relative, surrounded by her uncles who serve as mediators. Even though she was attempting to claim her legal right to the *mehriyeh*, the husband and his family object to the materialistic way the woman and her family perceive of the marriage. "Her family is treating it like a business deal." In Iran, the marriage gift rarely is given to the woman by the man in a divorce, even though women have a legal right to the marriage gift. It is used as a bargaining chip to get a divorce.

Another woman, who courageously initiated a divorce and married another man whom she loves, is ordered by the court to give custody of her beloved four-year-old daughter to her first husband, who already had custody of their eleven-year-old daughter. Apparently, the father does not care at all about providing an education for his daughters. But in Iran, when a woman wants to divorce her husband, custody for the children automatically reverts to the father. This is a harsh impediment to divorce.³⁹⁸ This woman sobs and pleads for the mercy of the court, but the unsympathetic female clerk of the court whispers, "She's ruined her children's lives just for lust...lust, lust, lust." The judge is equally unsympathetic with the despondent woman's pleas: "You remarried, and when you remarry you lose the child."

398. See MAHMOODY & HOFFER, *supra* note 12 (describing how Betty Mahomoodly refused to get a divorce in Iran from an abusive husband because she knew it would mean having to give up her daughter, whom the father was indoctrinating with force into the Muslim religion).

1. Reactions to the film as a Sign of the State of Women's Rights in Iran

Iranians abroad (primarily educated and sophisticated diaspora Iranians) objected to the film, claiming it did not represent the reality of women's lives in Iran. They argued that the film gave foreigners a "distorted and wrong image of Iranian culture and society."³⁹⁹ These Iranians abroad as well as officials in Iran were shocked to see illiterate and uneducated women portrayed on screen because this "shattered the picture of Iranian culture that they were trying to build in their host communities."⁴⁰⁰ In other words, the film went against the party line. Islamic officials claimed the film undermined the image of the strong Iranian family, which is the basis of the Islamic system, by showing women trying to get out of bad marriages.⁴⁰¹ Both these criticisms, one sociological and the other political, are characteristic of the sensitivities of Iranian society today. Iranian critics of the film believe that the film judges them too harshly.⁴⁰² They believe the West cannot accept the powerful role that religion plays in Iranian society today and in its legal system, which the West believes should be independent.⁴⁰³

Hosseini's film, *Divorce Iranian Style*, illustrates the difficult relationship that exists between Islam, gender, and democracy, a subject about which Mir-Hosseini has written several very important articles and books.⁴⁰⁴ Mir-Hosseini is one of the most reliable sources for providing consistently in-depth analyses of this highly complex issue. She is no longer living in Iran.

*D. The Cinematographic Representation of the Modern Iranian Woman in a Traditional Society: Two Women*⁴⁰⁵

The feminist film, *Two Women*, tells the story of two very different types of women, Fereshteh and Roya, who represent tradition and modernity in Iran today. At the outset the two had much in common: as friends in college in Tehran, both were very happy, bright, intellectually engaged women who believed in their own futures. Fereshteh was an exceptionally brilliant math student who loved college until one day she started to be stalked by a man on a motorcycle who refused to give up. He followed her for many days, and Fereshteh was very frightened. This

399. Mir-Hosseini, *Negotiating Gender*, *supra* note 227, at 197.

400. *Id.*

401. *Id.*

402. *See id.*

403. *See id.*

404. *See, e.g.*, ZIBA MIR-HOSSEINI, MARRIAGE ON TRIAL: A STUDY OF ISLAMIC FAMILY LAW: IRAN AND MOROCCO COMPARED (1993); MIR-HOSSEINI, ISLAM & GENDER, *supra* note 106; MIR-HOSSEINI & TAPPER, ISLAM & DEMOCRACY, *supra* note 1; Ziba Mir-Hosseini, *Women and politics in post-Khomeini Iran: divorce, veiling and feminist voices*, in WOMEN AND POLITICS IN THE THIRD WORLD (H. Afshar ed., 1996); Ziba Mir-Hosseini, *Powers and limits of negotiations: women's strategies in marriage and divorce*, in STRATEGIES DES FEMMES EN IRAN (Nouchine Yavari-d'Hellencourt, ed., 1997).

405. TWO WOMEN (1999). *See also* Jasmine Darznik, *Free Bird: Tahmineh Milani's "Two Women"*, *The Iranian* (Aug. 8, 2000), <http://www.iranian.com/JasminDarznik/2000/August/Women/> (last visited on Dec. 5, 2007).

incident caused her father to send her back home to Isfahan. Her father then forced Fereshteh to marry a man she did not love. Her husband soon transforms himself from a kind, caring person into a cruel, controlling tyrant, not unlike the husband in *Not Without my Daughter*, who also changed from a kind, loving Iranian doctor, husband, and father (when they were living in the United States) into a wife beater in Iran. Fereshteh's husband reneges on his promise to allow her to finish her education. Instead he forbids her from reading books, denies her the right to use the telephone by locking it, and becomes paranoid, accusing her of having a lover. This loveless marriage and sequestration transform the once beautiful and vibrant Fereshteh into a pale, lifeless being whose appearance scares even her best friend, Roya, who luckily married an emancipated husband. Roya's husband allows her to work in a high-level management position. Roya drives a car, wears Western garb with a headscarf only, and juggles many roles like most Western women do in society. She is a happy woman who represents if not the modern Iranian woman living in Iran today then perhaps the image of what modern women in Iran could be like. When the enslaved Fereshteh tries to get a divorce on the grounds that her husband "humiliates" her, the judge declares that these are not sufficient grounds for divorce. Despondent and hopeless, she retires to her prison-like life in the home with no connections to the outside world. But she is amazingly liberated by the very same stalker who threatened her in college and caused her downfall. The stalker kills her terrible husband, leaving Fereshteh "like a free bird" without "wings to fly." Now newly emancipated, she contemplates going back to school and back to work, but she is overwhelmed by her adult liberation for which she is now unprepared.

"[W]omen in the audience cheered and clapped[, and] *Two Women* became the biggest box office hit in Iranian history."⁴⁰⁶ This reaction is a clear sign of women's hope for equality in the future.

What went wrong for all these women represented in these four literary and cinematographic works? The answer can be found by looking closely at the inadequacy of Iranian domestic laws and the lack of enforcement of women's human rights protected by international laws and treaties to which Iran is either a signatory or subject to its provisions by customary international law. We shall now examine the history and development of Iranian family laws and later the international instruments that should theoretically protect women's rights in Iran if the political will to enforce them is developed.

IV. THE IRANIAN FAMILY LAWS: THEN AND NOW

Iranian family law in post-Revolutionary Iran is based on *Shari'a* law, as interpreted according to the Ja'fari School of *Shi'a* law.⁴⁰⁷ *Shari'a* law is not very favorable to women. The implementation of *Shari'a* law is arguably one of the

406. SCIOLINO, *supra* note 6, at 265.

407. See Ziba Mir-Hosseini, *Family Law in Modern Persia*, 9 ENCYCLOPEDIA IRANICA 192-96 (1999) [hereinafter Mir-Hosseini, *Iran Encyclopedia*].

causes for the establishment of gender inequality leading to a “gender apartheid”⁴⁰⁸ in Iran. Family law in Iran has changed several times, once under the Pahlavi monarchy in 1925 and again in 1979 under the Islamic Republic. According to Donna Hughes, “[n]ew laws strengthening gender apartheid and repression of women are not a thing of the past.”⁴⁰⁹ Even under Khatami’s reformist regime in 1997, new restrictive laws and policies were enacted in order to segregate women and men in the fields of medicine and healthcare.⁴¹⁰ Until the 1930s, the *Shi’a* clergy performed marriages and divorces in *Shari’a* courts that had jurisdiction in all family matters. Under Reza Shah’s reign there was a move to create a more centralized judicial system based on a Western model, establishing new courts and new laws reminiscent of European legal concepts and codes. A Civil Code was enacted between 1927 and 1935.⁴¹¹ However, Iranian Civil Code (ICC) Articles 1034 to 1206 on marriage, divorce, family affairs and children “retain the patriarchal bias of the *Shari’a*.”⁴¹² In ICC Article 1129 an attempt was made to extend the grounds upon which a woman could obtain a judicial divorce to include the husband’s refusal or his inability to provide for her, his refusal to perform his sexual duties, his mistreatment of her, and his affliction with a disease that could harm her life (Article 1130).⁴¹³ The Civil Code departed from *Shari’a* law by prohibiting the marriage of girls under thirteen in Article 1041.⁴¹⁴

The 1931 Marriage Law consisting of twenty articles and two notes reduced the administrative and judicial functions of the clergy.⁴¹⁵ The Iranian Marriage Law also established financial penalties and a prison term for anyone involved in the marriage of girls under thirteen (Article 3). ICC Articles 4 and 8 to 17 provide the wife with a right to maintenance and the right to initiate divorce proceedings in a civil court.⁴¹⁶

In 1967 a big change in family law occurred when the Iranian Family Protection Law was enacted.⁴¹⁷ This law, which prohibited men’s right to an automatic divorce and to the practice of polygamy, was written into the Civil Code as well.⁴¹⁸ The Family Protection Law set up new court procedures for family disputes.⁴¹⁹ Divorcing couples were required to appear in courts presided over by civil judges, some of whom were women.⁴²⁰ If both parties do not agree to a

408. See generally Donna Hughes, *Women and Reform in Iran* (Feb. 2000), available at <http://www.uri.edu/artsci/wms/hughes/reform.htm>.

409. *Id.*

410. *See id.*

411. Mir-Hosseini, *Iran Encyclopedia*, *supra* note 407, at 192.

412. *Id.* See also Qanun-i Madani [Civil Code] Tehran 1314 [1935], articles 1034-1206 (Iran), translated in Iran Human Rights Documentation Center, <http://www.iranhrc.org/english/pdfs/Codes/TheCivilCode.pdf> (last visited on Dec. 5, 2007).

413. Mir-Hosseini, *Iran Encyclopedia*, *supra* note 407, at 192.

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.*

420. *Id.*

divorce, the court can issue a Certificate evidencing "Impossibility of Reconciliation."⁴²¹ Men and women could appoint arbitrators to try to bring about reconciliation, but the final decision rested with the court (Articles 6 to 13).⁴²² The Family Protection Law included many other provisions that are favorable to women's rights to a divorce in Iran.⁴²³

In 1975 the Family Protection Law was amended, and the minimum age for marriage was increased from fifteen to eighteen for females and from eighteen to twenty for males.⁴²⁴ The new law also provided more rights to women seeking a divorce and child custody.⁴²⁵ Many clergy opposed this law, viewing it as the destruction of Muslim values and dissolution of the entire Iranian family structure.⁴²⁶ "Ayatollah Khomeini denounced it [the Family Protection Law] as contrary to Islam, declaring divorces issued under the FPL to be void,"⁴²⁷ retroactively.

Khomeini and the Islamic Republic reinstated strict *Shari'a* law and special civil courts presided over by religious judges who were "free" from the Civil Procedure Code.⁴²⁸ During this period, Khomeini instituted certain contradictory policies resulting in the reduction in restrictions imposed on men's rights to divorce and polygamy and the increase in compensation to women who are harmed by divorce and polygamy.⁴²⁹ The Council of Guardians was now required to revise any laws found to be in contradiction with *Shari'a* law.⁴³⁰ Thus, for example, Article 1041, which formerly set a minimum age for marriage at thirteen for females and fifteen for males, was amended in 1982 to prohibit marriage prior to the age of nine for girls and fifteen for boys.⁴³¹ Legalizing marriage for nine-year old girls is a serious step backwards for women's human rights because these young girls are generally forced into marriage by their parents.⁴³² Incidentally, Article 3 of the 1931 Marriage Law makes it illegal and punishable by six months to two years imprisonment to marry a girl under thirteen.⁴³³ Similarly contradictory rules exist in Iran for polygamy.

Temporary marriage (*sigheh*, a custom that allows a married man to have sex with another woman by temporarily "marrying" her and unmarrying her after the sex is completed) is recognized as a valid marriage under the Iranian Civil Code, but the 1931 Marriage Laws are silent as to the legality of this temporary marriage.⁴³⁴ After 1979, Special Civil Courts heard disputes involving the temporary

421. *Id.*

422. *Id.*

423. *See id.* (providing an in-depth analysis of Iranian Family Law).

424. *Id.*

425. *Id.*

426. *Id.*

427. *Id.* at 194.

428. *Id.*

429. *Id.*

430. *Id.*

431. *Id.*

432. *Id.*

433. *Id.*

434. *Id.*

marriage and even authorized their registration, thus giving legal status to the temporary marriage and to the legitimization of extramarital sex.⁴³⁵

Women's custody rights were also curtailed in 1979. The Iranian Civil Code gives a mother the right to the custody of her daughter only until the age of seven and to the custody of her son only until the age of two (Article 1169).⁴³⁶ In the case of the husband's death, a woman naturally acquires custody of her children (Article 1170) but loses custody if she remarries (Article 1171), in which case the child is then raised by the child's paternal grandfather (Article 1180).⁴³⁷ Mothers of martyrs have the right to receive their deceased husband's salary and to keep custody of their children under a new legislation that was passed on 6 Mordad 1365 (Islamic year).⁴³⁸

In 1982 new stipulations were added to the marriage contract entitling women to claim half the wealth acquired by her husband during the marriage (provided that she does not initiate the divorce) and enabling women to seek a judicial divorce, without the signature of her husband.⁴³⁹ Article 1130 of the Civil Code was amended in 1982 to give the judge in the court the power to grant or withhold a divorce requested by a woman.⁴⁴⁰ Article 1130 was again amended in 2002 to empower a judge to issue a divorce when a woman establishes that the continuation of the marriage would entail intolerable suffering or hardship.⁴⁴¹ The enforcement of Islamic jurisprudence rules (*fiqh*) in Iran since the 1979 Revolution resulted in these two favorable amendments to Article 1130 of the Civil Code; however, there are serious gaps between legal theory and social practice in Islamic law as enforced in Iran.⁴⁴² These gaps have "made the unequal construction of gender relations a site of contestation."⁴⁴³

In 1992, Amendments to Divorce Regulation (ADR) were passed in order to reinstate some of the elements of the Family Protection Law's divorce provisions that were rejected earlier.⁴⁴⁴ ADR "requires all divorcing couples.... to go through a process of arbitration," and if the arbiters fail to reconcile the couple in dispute, then "the court allows the man to effect and register a divorce.... after he has paid his wife" what she has a legal right to receive.⁴⁴⁵ ADR note 6 "enables the court to place a monetary value on women's housework and to force the husband to pay her 'wages in kind' for her work done during her marriage" (provided that the wife does not initiate the divorce and provided that the divorce is not caused by any fault

435. *Id.*

436. *Id.*

437. *Id.*

438. *Id.*

439. *Id.*

440. *Id.*

441. Ziba Mir-Hosseini, *When a Woman's Hurt Becomes an Injury: 'Hardship' as Grounds for Divorce in Iran*, 5 HAWAA 111, 111 (2007).

442. *Id.*

443. *Id.*

444. Mir-Hosseini, *Iran Encyclopedia*, *supra* note 407, at 196.

445. *Id.*

of hers).⁴⁴⁶ Thus, if the woman decides to divorce her husband, she loses her right to the housework wages.⁴⁴⁷ If wages for housework are not possible, the husband must provide the wife with a marriage gift, "the amount [of which is] to be decided by the court" on the basis of the husband's financial need.⁴⁴⁸

A new Law of Formation of General Courts, enacted in June 1994, is designed to bring about a restructuring of the courts in Iran.⁴⁴⁹ The Special Civil Courts governing family law matters will disappear.⁴⁵⁰ In the future family disputes must appear in General Courts presided over by either a *mojtahed* or a civil judge who has jurisdiction over all penal and family law cases.⁴⁵¹

A. Concept of Marriage in Iran: The Marriage Contract

Marriage in Iran is a contract regulated by a code of law that is deeply rooted in religious precepts and based on a "patriarchal ethos."⁴⁵² The three elements of an Iranian marriage contract constitute (1) the offer of marriage made by the woman or her guardian, (2) the acceptance by the man, and (3) the payment of a dower (*mahr*) called the "marriage gift," which is "money or any valuable [item] that the husband pays or pledges to pay the wife on consummation of the marriage."⁴⁵³ Polygamy is a man's legal right to marry more than one woman.⁴⁵⁴ Therefore, one man can enter into more than one marriage at a time, "up to four permanent unions and as many temporary ones as he desires or can afford," by virtue of the "temporary marriage" (*mut'a*).⁴⁵⁵

The marriage contract sets forth certain rights and duties for the man and for the woman, such as *tamkin* (sexual submission, obedience) and *nafaqa* (maintenance).⁴⁵⁶ The husband has the right to demand the woman's sexual submission because this is the wife's duty.⁴⁵⁷ The husband must provide shelter, food, and clothing, and the wife has a right to this maintenance.⁴⁵⁸ According to the Iranian marriage contract, a wife possesses nothing more than her marriage gift and her own personal wealth.⁴⁵⁹ Only the husband has the unilateral right to terminate the contract, which he can do without any grounds and without the wife's consent or even her presence.⁴⁶⁰ The inherently patriarchal discrimination and the lack of equality established by this contract are vividly portrayed in *Divorce Iranian Style*,

446. *Id.*

447. *Id.*

448. *Id.*

449. *Id.*

450. *Id.*

451. *Id.*

452. See Mir-Hosseini, *Tamkin*, *supra* note 230, at 137-38.

453. *Id.* at 137.

454. *Id.* (citing SHAHLA HAERI, LAW OF DESIRE: TEMPORARY MARRIAGE IN IRAN 50 (1989)).

455. *Id.*

456. *Id.*

457. *Id.*

458. *Id.*

459. See *id.*

460. See *id.*

a film that illuminates the vagaries of Iranian family law⁴⁶¹ and the procedural difficulties of divorce cases initiated by women in Iran.

A large majority of divorce cases initiated by women never reach a decision [because] they are [either] abandoned after two or three hearings [or the] couple succeed[s] in reaching an out-of-court agreement or they give up [because of] the futility of their efforts. More than 70 percent of all divorces registered in any given year in Tehran are...by mutual consent...[involving] the wife waiving her claim to *mahr* [the marriage gift] in exchange for the husband's consent [to divorce].⁴⁶²

The marriage gift is, thus, a bargaining chip used by women to get the husband to consent to the divorce.

V. INTERNATIONAL HUMAN RIGHTS LAWS PROTECTING WOMEN'S RIGHTS AND THEIR REPRESENTATION IN THE HUMANITIES

"Respect for basic human rights in Iran, especially freedom of expression and opinion, deteriorated considerably in 2005."⁴⁶³ Human Rights Watch reports routine use by the government of torture, ill treatment in detention, and prolonged solitary confinement where the judiciary commits serious human rights violations.⁴⁶⁴ Abuses are perpetrated by parallel institutions like paramilitary groups, plainclothes men, and intelligence services that attack protestors.⁴⁶⁵ Iran has signed and is bound by certain international human rights treaties that, if enforced, would provide protection against these abuses and give women the justice and equality they deserve.

A. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979 by the UN General Assembly and is considered to be the international bill of rights for women.⁴⁶⁶ This comprehensive treaty codifies human rights as they specifically apply to women and girls. It defines discrimination against women and sets up a program for nations to

461. DIVORCE IRANIAN STYLE, *supra* note 110; *see also* SCIOLINO, *supra* note 6, at 264 ("In our country, the problem is the law," Hashemi says. "All the judges are men, and they don't understand the problems of women.").

462. Mir-Hosseini, *Tamkin*, *supra* note 230, at 149.

463. Human Rights Watch, Essential Background: Overview of human rights in Iran (Dec. 31, 2005), <http://hrw.org/english/docs/2006/01/18/iran12214.htm> (last visited Sept. 25, 2007).

464. *Id.*

465. *Id.*

466. U.N. Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 14 [hereinafter CEDAW], available at <http://www.un.org/womenwatch/daw/cedaw/index.html>.

eradicate discrimination domestically. Since there are currently 183 states party to the Convention, and the treaty has been in existence for more than twenty-seven years, arguably the provisions of CEDAW can be considered "customary international law" and applicable to even non-signatory States.⁴⁶⁷ Iran, along with the United States, has not signed CEDAW.

CEDAW provides the foundation for achieving equality for women publicly, politically and privately.⁴⁶⁸ CEDAW protects equality in voting, education, health, employment, access to the legal system, nationality and many other fundamental freedoms. Although Iran's Parliament approved CEDAW in August 2003, the hard-line clerics in the Guardian Council ultimately refused to sign the treaty, stating that it went against Islamic law and was unconstitutional.⁴⁶⁹ Nevertheless, since CEDAW has risen to the level of customary international law, Iran, arguably, may not take any action inconsistent with the treaty.⁴⁷⁰

Article 2 of CEDAW requires states to implement policies of equality between men and women within their national constitutions and legal systems.⁴⁷¹ All forms of discrimination against women are forbidden, whether by public or private entities, and "penal provisions which constitute discrimination against women" must be repealed.⁴⁷² Discrimination against women exists on many levels of the public and private sphere in Iran.⁴⁷³ Women are not given as many rights as men,⁴⁷⁴ and they are under the constant domination and control of their husbands or fathers.⁴⁷⁵ Women in Iran cannot travel without their husbands' permission⁴⁷⁶ and must sit in the back of gender-segregated buses.⁴⁷⁷ A woman's testimony in court is worth only half as much as a man's⁴⁷⁸ and judges frequently give preference to men in domestic matters, even if the man has a history of domestic violence.⁴⁷⁹ Women are punished more severely than men in criminal matters – such as stoning women for adultery while they are buried from the neck down, while men are buried from

467. See HENRY J. STEINER & PHILLIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 69, 72 (2d ed., 2000) ("Customary law refers to conduct, or the conscious abstention from certain conduct, of states that becomes in some measure a part of international legal order." (inferring that the CEDAW is accepted as customary law because more than 140 states have adopted it since its inception)).

468. See CEDAW, *supra* note 466.

469. Nazila Fathi, *Iran's Hard-Liners Reject Reform Bills Approved by Parliament*, N.Y. TIMES, Aug. 14, 2003, at A11; see also CEDAW, *supra* note 466 (showing that Iran has not adopted the CEDAW – Country Reports section).

470. See STEINER & ALSTON, *supra* note 467.

471. CEDAW, *supra* note 466, at 16.

472. *Id.*

473. See NAFISI, *supra* note 11, at 261.

474. *Id.*

475. See Hughes, *supra* note 408; see also BROOKS, *supra* note 142, at 106 (using the main character in that chapter as an example of the extraordinary amount of control that a man in Iran has over his wife's life).

476. See NAFISI, *supra* note 11, at 286 ("Azin had applied for a visa to Canada, but even if her application was accepted, she couldn't leave the country without her husband's permission.").

477. *Id.* at 27.

478. *Id.* at 261.

479. *Id.* at 273.

the waist down, thus arguably giving men a greater opportunity for escape.⁴⁸⁰ Women are rarely given the promotions they deserve; even when they work tirelessly, and women cannot reach their full potential⁴⁸¹ in a stultifying, patriarchal system that looks down on working women. For example, the Islamic Republic applies “blood money” (compensation to the victim) in criminal cases, and the family of a victim of homicide or manslaughter has the right to choose between legal punishment or blood money.⁴⁸² Under the Iranian code, the worth of a woman’s life equals half of a man’s.⁴⁸³ In one case a judge ruled that the blood money for two men was worth more than the life of the murdered nine-year-old girl, and the judge demanded that her family pay thousands of dollars to finance the execution of the male criminals, unjustly punishing the female victim’s family.⁴⁸⁴

States are obligated by Article 5 of CEDAW “to modify the social and cultural patterns of conduct of men and women” to eliminate the idea that women are inferior to men or that men are their superiors.⁴⁸⁵ In Iran, women are blamed for their beauty and sexuality, forced to bear the responsibility of a man’s lustful looks, thoughts or behavior.⁴⁸⁶ In order to “protect” the men after the Revolution, women were forced to veil themselves,⁴⁸⁷ and women could not even maintain eye contact with a man.⁴⁸⁸ After the Revolution women could not sing publicly because a woman’s voice is considered provocative.⁴⁸⁹ Because “family honor rests on the virtue of women,” the shame of a woman’s rape could only be erased by execution of the perpetrator, for which the family of the woman would have to pay “blood money.”⁴⁹⁰

Article 7 of CEDAW requires that women have equal access to voting rights and to run for election for public office.⁴⁹¹ CEDAW also requires that women participate equally “in the formulation of public office” and “perform all public functions at all levels of government.”⁴⁹² Although women in Iran are allowed to vote, there are severe restrictions upon women who run for public office and only approximately four percent of seats in Parliament are held by women.⁴⁹³ Women in Iran who held ministerial positions at the time of the Revolution were stoned to death (*i.e.* the Minister of Education) or forced into exile (*i.e.* the Minister of Women’s Affairs).⁴⁹⁴ Female members of Parliament are segregated and forced to

480. BROOKS, *supra* note 142, at 46.

481. See EBADI, *supra* note 24, at 75.

482. *Id.* at 113-14.

483. *Id.* at 114.

484. *Id.*

485. CEDAW, *supra* note 466, at art. 5.

486. See NAFISI, *supra* note 11, at 27.

487. See *id.* at 152.

488. See *id.* at 183.

489. NAFISI, *supra* note 11, at 108; EBADI, *supra* note 24, at 181.

490. EBADI, *supra* note 24, at 114.

491. CEDAW, *supra* note 466, at art. 7.

492. *Id.*

493. U.N. DEVELOPMENT PROGRAMME, *Human Development Report 2005*, 304 (2005), available at http://hdr.undp.org/en/media/hdr05_complete.pdf [hereinafter UNDP].

494. NAFISI, *supra* note 11, at 262.

work in an empty room behind a curtain, without chairs, a table or even office equipment to make their attempts to legislate any easier.⁴⁹⁵ Female government employees are regarded as a “nuisance,” especially those who are vocal about their oppression.⁴⁹⁶

In Article 9 of CEDAW, women are assured their right “to acquire, change or retain their nationality.”⁴⁹⁷ A woman’s nationality is protected because marriage does not “change the nationality of the wife, render her stateless or force upon her the nationality of the husband,” and women shall be granted “equal rights with men with respect to the nationality of their children.”⁴⁹⁸ In Iran, women must convert to Islam in order to marry an Iranian.⁴⁹⁹ Any children born to a non-Iranian mother and an Iranian father are considered Iranian, and the father has complete control over his wife and children.⁵⁰⁰ Fathers and husbands even have the ability to notify the government and forbid their wives from leaving the country.⁵⁰¹

Article 10 of CEDAW requires States to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education....”⁵⁰² Education of women is one of the areas that has been gradually improving in Iran.⁵⁰³ Immediately after the Revolution, some women were refused tenure,⁵⁰⁴ forced out of universities and fired from teaching positions because of their refusal to wear the veil and conform to Khomeini’s “ideal of...a Muslim woman teacher.”⁵⁰⁵ University faculty and students were expelled, jailed, and purged for a variety of offenses, from being “too Western in . . . attitude”⁵⁰⁶ to being “an enemy of God”⁵⁰⁷ and for “using obscene language in class.”⁵⁰⁸ Nafisi’s university did not allow women to enter through the main university entrance, so women had to use a separate door to the side.⁵⁰⁹ It “segregate[d] men and women in classes”⁵¹⁰ and even segregated the cafeteria.⁵¹¹ Professors extolled the differences between virtuous Muslim girls and promiscuous

495. EBADI, *supra* note 24, at 185-86.

496. *Id.* at 73.

497. CEDAW, *supra* note 466, at art. 9.

498. *Id.*

499. BROOKS, *supra* note 142, at 92.

500. *See id.* at 106; *see* NAFISI, *supra* note 11, at 286.

501. *See* NAFISI, *supra* note 11, at 286. In a personal interview Susan Tiefenbrun conducted on June 8, 2006 with Sonez Mashayekhi, a married Iranian woman who went to law school in Iran, Mashayekhi reported that when she attempted to leave the country to study in the United States, she was stopped by her husband who reported her to the CIA as a terrorist.

502. CEDAW, *supra* note 466, at art. 10.

503. Halper, *supra* note 17, at 90.

504. *See* NAFISI, *supra* note 11, at 10.

505. *Id.* at 165.

506. *Id.* at 118.

507. *Id.* at 119.

508. *Id.* at 117.

509. *See id.* at 29.

510. *Id.* at 9.

511. EBADI, *supra* note 24, at 106.

Christian girls,⁵¹² and the faculty were summoned to endless meetings and debates over “women’s rights” and the government’s “war against women.”⁵¹³

Women were also forbidden to have certain careers or study certain technical and experimental fields.⁵¹⁴ Other fields were restricted for women because of quotas ranging from twenty percent to fifty percent.⁵¹⁵ Women were not allowed to receive scholarships for study abroad programs without the permission of their husbands or fathers.⁵¹⁶ Schools below the university level were segregated by gender.⁵¹⁷

However, in the years following the Revolution, many changes occurred in the area of education for women.⁵¹⁸ Religious women were able to attend universities once they became “protected” by the veil.⁵¹⁹ Because of increased gender segregation in Iran, more female teachers, doctors and social workers were needed.⁵²⁰ As the restrictions on women’s study of science and technical subjects were lifted, the percentage of female university students also dramatically increased.⁵²¹ There was also a drive to improve the literacy rates of women in rural areas,⁵²² which cut the illiteracy rate of women from sixty percent in 1980 to thirty percent in 2005.⁵²³ While these numbers are far from perfect, they do show an improving trend in the government’s commitment to the education of women in Iran after the Revolution.

The right to equal employment rights, guaranteed in Article 11 of CEDAW,⁵²⁴ is another area of fluctuation within the political tide of Iran’s government.⁵²⁵ After the Revolution, the government initially encouraged women to stay inside the home and to refrain from working.⁵²⁶ However, during the Iran-Iraq War, working conditions for mothers improved significantly, such as the addition of daycares to workplaces and the availability of better benefits for women.⁵²⁷ Once the war ended and the government began to rebuild its economy with greater global involvement, the need for women in the workplace continued.⁵²⁸

In Iran today improvements in the area of women’s salary need to be made, since half of the women in Iran contribute to the family income, yet a woman typically earns less than a third of a man’s salary.⁵²⁹ With the increase in

512. See NAFISI, *supra* note 11, at 30.

513. *Id.* at 111.

514. Halper, *supra* note 17, at 106.

515. *Id.* at 106; see EBADI, *supra* note 24, at 108.

516. Halper, *supra* note 17, at 88.

517. *Id.* at 106.

518. *Id.* at 116.

519. See *id.* at 124; EBADI, *supra* note 24, at 106.

520. Halper, *supra* note 17, at 116.

521. *Id.* at 116.

522. *Id.* at 113; EBADI, *supra* note 24, at 106.

523. UNDP, *supra* note 493, at 228, 308.

524. CEDAW, *supra* note 466, at art. 11.

525. See NAFISI, *supra* note 11, at 275.

526. Halper, *supra* note 17, at 116.

527. *Id.*

528. *Id.* at 117.

529. UNDP, *supra* note 493, at 312.

educational opportunities for women, many more women have earned university and graduate degrees, but the professional market has been unable to keep up.⁵³⁰ The few jobs available usually go to men, and “[t]hough educated women outnumber educated men, the rate of women’s unemployment is three times higher.”⁵³¹

Article 13(c) of CEDAW requires that women have the “the right to participate in recreational activities, sports⁵³² and all aspects of cultural life.”⁵³³ But after the Revolution, sports became segregated by gender,⁵³⁴ and women’s teams received far less funding, training or quality coaching.⁵³⁵ Attendance at women’s games or sporting events is limited to women only, so that they may participate without wearing the *hejab*.⁵³⁶ In 2006, President Ahmadinejad made a surprising move towards allowing women to attend soccer games with men, but he was overruled by the Supreme Leader Ayatollah Khomeini.⁵³⁷ Women’s participation in the arts was also severely curtailed after the Revolution.⁵³⁸ Ballet and dancing were forbidden and eventually women singers were banned “because a woman’s voice, like her hair, was sexually provocative and should be kept hidden.”⁵³⁹

Equality with men before the law is guaranteed to women in Article 15 of CEDAW.⁵⁴⁰ One of the first decisions of the new Islamic Republic, before even establishing a constitution or electing a parliament, was to abolish the Family Protection Law that guaranteed women equal rights in marriage, divorce and child custody issues.⁵⁴¹ By abolishing this law the drafters of the post-Revolutionary penal code “turned the clock back fourteen hundred years” and imposed laws highly discriminatory towards women.⁵⁴² For example, a woman may not travel outside the country without the permission of her husband, and the husband may notify the government not to allow his wife to leave.⁵⁴³ A “woman [must] ask her husband’s permission for [a] divorce.”⁵⁴⁴ In some cases, physical and mental abuse of women is not considered sufficient grounds for a divorce, and the judge might

530. EBADI, *supra* note 24, at 108.

531. *Id.*

532. See BROOKS, *supra* note 142, at 201-13 (discussing of Iranian women in sports in pre and post-Revolutionary Iran).

533. CEDAW, *supra* note 466, at art. 13(c). See also BROOKS, *supra* note 142, at 201-13 (discussing Iranian women in sports in pre and post-Revolutionary Iran).

534. Halper, *supra* note 17, at 106.

535. See Jenny Steel, *Sports and the Scarf*, BBC NEWS, Dec. 9, 2005, http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/4511680.stm (last visited Oct. 1, 2007).

536. *See id.*

537. *Iran Women Sports Ruling Vetoed*, BBC NEWS, May 8, 2006, http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle_east/4751033.stm (last visited Oct. 1, 2007).

538. NAFISI, *supra* note 11, at 108.

539. *Id.*; EBADI, *supra* note 24, at 181.

540. CEDAW, *supra* note 466, at art. 15.

541. NAFISI, *supra* note 11, at 261.

542. EBADI, *supra* note 24, at 51.

543. NAFISI, *supra* note 11, at 286.

544. EBADI, *supra* note 24, at 51.

even blame the woman for the husband's beatings.⁵⁴⁵ In Iran, alimony is not given to women, and child custody is usually awarded to the father,⁵⁴⁶ even if the father is "guilty of horrific abuse" of the child.⁵⁴⁷ Women are given harsher sentences in criminal matters,⁵⁴⁸ and their testimony is worth only half that of a man's.⁵⁴⁹

Finally, Article 16(f) of CEDAW gives women "[t]he same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children."⁵⁵⁰ However, when Khomeini declared that the Family Protection Law was un-Islamic, this decision quickly set a patriarchal precedent affirming that men and paternal family members would be given preference in child custody matters.⁵⁵¹ If divorced, women are allowed to retain guardianship of male children but only until the male child reaches the age of two and until the female child reaches the age of seven.⁵⁵² Although the pro-active demands of women during the Iran-Iraq war gave widows more physical custody over their children, guardianship is still technically held by paternal family members.⁵⁵³ Women need the permission of their husbands to travel even just overnight with their children,⁵⁵⁴ and parenting duties are heavily unequal, with the mother shouldering most of the responsibility.⁵⁵⁵

B. International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR)⁵⁵⁶ is one of two major international human rights treaties that guarantee the rights of every individual to civil and political freedoms. The ICCPR codifies the first generation civil and political rights delineated in the Universal Declaration of Human Rights (UDHR),⁵⁵⁷ such as freedom of speech, the right to due process and a fair trial, and freedom of religion. Iran signed the ICCPR in 1968 and ratified it without reservations in 1975. Although there was a regime change in Iran in 1979, states parties are still obligated to respect their international treaty obligations.

After the Revolution, Ayatollah Khomeini faced criticism from many international human rights groups because of the large number of summary

545. NAFISI, *supra* note 11, at 273.

546. *Id.* at 286; EBADI, *supra* note 24, at 111.

547. EBADI, *supra* note 24, at 123.

548. NAFISI, *supra* note 11, at 261.

549. *Id.*; EBADI, *supra* note 24, at 51.

550. CEDAW, *supra* note 466, at art. 16(f).

551. NAFISI, *supra* note 11, at 286; EBADI, *supra* note 24, at 53.

552. Halper, *supra* note 17, at 95.

553. *Id.* at 115.

554. EBADI, *supra* note 24, at 100.

555. *Id.* at 153.

556. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966), available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm [hereinafter ICCPR].

557. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 (Dec. 12, 1948), available at <http://www.unhchr.ch/udhr/lang/eng.htm> [hereinafter UDHR].

executions that followed the Revolution.⁵⁵⁸ Khomeini's response was heartless and indicates a flagrant disrespect of traditional notions of human rights:

Criminals should not be tried. The trial of a criminal is against human rights. Human rights demand that we should have killed them in the first place when it became known that they were criminals.... They criticize us because we are executing the brutes.⁵⁵⁹

In direct violation of the right to life guaranteed by Article 6 of the ICCPR, executions became the rule rather than the exception in post-Revolutionary Iran.⁵⁶⁰

Dynamic interpretation of the Koran is the key to providing women with civil and political rights as well as human rights under Islam. While human rights of all persons men and women alike are often violated under a totalitarian regime such as the Islamic Republic of Iran, women's basic civil and political rights are particularly implicated in Iran because of the strict Islamist regulations set by the clerics,⁵⁶¹ who interpret the Koran more narrowly than feminists like Shirin Ebadi would like.⁵⁶² For Ebadi, Islam and women's rights are compatible as long as the Koran is interpreted in a manner to favor women.⁵⁶³ Fundamentalists apply a literal interpretation of the Koran resulting in harsh sentences. For example, stoning is the punishment for adultery and prostitution.⁵⁶⁴ Unfair show trials for suspected criminals are quite common.⁵⁶⁵ For example, one woman was charged with "corruption on earth," "sexual offenses," and "violation of decency and morality," but her only real "crime" was her position under the Shah as the former Minister of Education. She was placed in a sack and either stoned or shot to death.⁵⁶⁶ One official, whose only crime was to name his dogs after two clerics as an insult to them, was ordered to die.⁵⁶⁷ So-called "enem[ies] of God" were murdered daily, whether former ministers and educators, prostitutes, leftist revolutionaries⁵⁶⁸ or women of amazing beauty.⁵⁶⁹

In Iran, several sources report that Iranian girls believed to be virgins and convicted of a crime were often "married" off to prison guards who would rape them before executing them to deprive the girls of eternal bliss in heaven, confident that if the girls died as virgins they would go to heaven.⁵⁷⁰ Khomeini issued a *fatwa* sanctioning the rape of girls before their execution and another *fatwa* permitting the

558. NAFISI, *supra* note 11, at 96.

559. *Id.*

560. EBADI, *supra* note 24, at 140-41.

561. NAFISI, *supra* note 11, at 108.

562. EBADI, *supra* note 24, at 122.

563. *Id.* at 187-88; *see also* Abdullah Ahmed An-Na'im, *Human Rights in the Muslim World, in* INTERNATIONAL HUMAN RIGHTS IN CONTEXT 396 (Henry J. Steiner & Philip Alston eds., 2000).

564. NAFISI, *supra* note 11, at 261.

565. *Id.* at 101; EBADI, *supra* note 24, at 59.

566. NAFISI, *supra* note 11, at 112-13.

567. *Id.* at 137.

568. *Id.* at 119.

569. *Id.* at 212.

570. *Id.* at 212; EBADI, *supra* note 24, at 91.

execution of pregnant women.⁵⁷¹ Minors were not exempt from this series of murders, and many teenagers and young children were killed without mercy or even a trial.⁵⁷² During the Iran-Iraqi war young boys under the age of thirteen were abducted off the streets against their will and sent off to war to die in the minefields. But these boys died as martyrs, and their families boasted of their martyrdom with pride in a prevailing new cult of death. Iran became bloodthirsty – publishing the names, pictures, and crimes of those executed in the paper on a daily basis.⁵⁷³ Rather than protests calling for an end to the killings, there were increasing demands and slogans calling “for more blood.”⁵⁷⁴ A female photojournalist, Zahra Kazemi, was imprisoned and tortured for taking pictures and defying a prison guard.⁵⁷⁵ Her injuries from the torture and the beatings were so severe that she died only a few weeks after her imprisonment.⁵⁷⁶

Article 7 of the ICCPR forbids degrading treatment or punishment.⁵⁷⁷ Like the villainous Humbert in Nabokov’s *Lolita*, who regulated every step of Lolita’s young life,⁵⁷⁸ Ayatollah Khomeini forced women with threats of punishment and humiliation to live as he envisioned them – ideal Muslim women.⁵⁷⁹ Failure to adhere to this vision with improper dress length, scarf thickness, wearing of nail polish, makeup⁵⁸⁰ or even pink socks⁵⁸¹ subjected women to violent inspections, molestations,⁵⁸² detainment or public lashing.⁵⁸³ When one girl was found in mixed company, she and the other girls were arrested for infractions on matters of morality and subjected to two brutal virginity tests, forced to sign confessions at a “trial” and sentenced to twenty-five lashes.⁵⁸⁴

The arbitrary nature of these arrests and the severe punishments meted out for minor infractions allegedly committed by women cannot remain unnoticed. For example, one girl traveling with her fiancé and two male companions was arbitrarily detained by the morality police, tried and sentenced to forty lashes; however, the punishment was given instead to her fiancé (who committed no crime or infraction at all) since there was no woman present to mete out her punishment.⁵⁸⁵ Propoganda admonishing women to adhere to this vision of

571. THE NAT’L COUNCIL OF RESISTANCE OF IRAN FOREIGN AFFAIRS COMM., *Islam: Beacon of Women’s Emancipation*, in WOMEN, ISLAM & EQUALITY 37 (1995), available at http://www.iran-e-azad.org/english/book_on_women/wi&e.pdf.

572. NAFISI, *supra* note 11, at 191.

573. *Id.* at 102.

574. *Id.* at 100.

575. EBADI, *supra* note 24, at 196.

576. *Id.* at 196-97.

577. ICCPR, *supra* note 556, at art. 7.

578. NAFISI, *supra* note 11, at 49.

579. *Id.* at 165.

580. *Id.* at 29; EBADI, *supra* note 24, at 180.

581. NAFISI, *supra* note 11 at 76.

582. *Id.* at 168.

583. EBADI, *supra* note 24, at 180.

584. NAFISI, *supra* note 11, at 73.

585. EBADI, *supra* note 24, at 98-99.

Khomeini's morality adorned the streets. In this repressive climate, women were reduced to "ethereal being[s] drifting soundlessly down the street."⁵⁸⁶

Arbitrary arrests and detentions are prohibited by Article 9 of the ICCPR.⁵⁸⁷ However, during the days of the Revolution, many were unfairly arrested by the government simply for belonging to certain political groups,⁵⁸⁸ speaking out or writing against the government,⁵⁸⁹ traveling with a man that was not a relative.⁵⁹⁰ People were arrested just because the Revolutionary Guards had a search warrant, and even though they found no evidence of illegal activities, they couldn't let the warrant "go to waste."⁵⁹¹ The "frightening, thuggish"⁵⁹² morality police in later years roamed the city of Tehran in white jeeps, jailing any women they found for showing hair from underneath their scarves, wearing improper robes,⁵⁹³ wearing makeup or even slippers.⁵⁹⁴ A few of Nafisi's girls were imprisoned for several years after the Revolution because of their "political activities," and they reported being grateful that they were the lucky ones who were not executed.⁵⁹⁵

Article 12(2) of the ICCPR states that "everyone shall be free to leave any country, including his own."⁵⁹⁶ Women in Iran do not have this basic human right. When one of Nafisi's girls struggled with a bad marriage, she applied for a visa to Canada, "but even if her application was accepted, she couldn't leave the country without her husband's permission."⁵⁹⁷ Husbands could also forbid their wives from leaving the country by refusing to sign the papers that would allow them to travel.⁵⁹⁸ Women who were granted scholarships to study abroad were also not allowed to leave the country without the accompaniment of their fathers or husbands.⁵⁹⁹

Article 18 of the ICCPR guarantees that "[e]veryone shall have the right to freedom of thought, conscience and religion."⁶⁰⁰ When the Revolution ended, the Islamic forces took power and made everyone wear a religious façade, regardless of their religious beliefs.⁶⁰¹ Women were forced to wear the *hejab*, whether or not they were practicing Muslims.⁶⁰²

586. NAFISI, *supra* note 11, at 168.

587. ICCPR, *supra* note 556, at art. 9.

588. NAFISI, *supra* note 11, at 31; EBADI, *supra* note 24, at 67.

589. NAFISI, *supra* note 11, at 116.

590. EBADI, *supra* note 24, at 98.

591. NAFISI, *supra* note 11, at 72-73.

592. EBADI, *supra* note 24, at 102.

593. NAFISI, *supra* note 11, at 275; EBADI, *supra* note 24, at 102-03.

594. EBADI, *supra* note 24, at 102-03.

595. NAFISI, *supra* note 11, at 323 ("There, in jail, I like the rest of them thought we would be killed and that would be the end.").

596. ICCPR, *supra* note 556, at art. 12(2).

597. NAFISI, *supra* note 11, at 286.

598. *Id.*; BROOKS, *supra* note 142, at 106.

599. *See* Halper, *supra* note 17, at 88.

600. ICCPR, *supra* note 556, at art. 18(1).

601. EBADI, *supra* note 24, at 40. *See* NAFISI, *supra* note 11, at 112 (discussing the reimposition of the veiling of women signifying the "victory of the Islamic aspect of the revolution").

602. NAFISI *supra* note 11, at 152; *see* EBADI, *supra* note 24, at 72.

[Once] the mullahs ruled the land, religion was used as an instrument of power, an ideology. It was this ideological approach to faith that differentiated those in power from millions of ordinary citizens, believers like Mahshid, Manna and Yassi, who found the Islamic Republic their worst enemy.⁶⁰³

In addition to forced religious garb, Iranian women were also required to support the war against Iraq. Iranians were forbidden to protest the war or to show grief when loved ones were killed or when a neighbor's house was bombed.⁶⁰⁴ Censorship was then and is now everywhere in Iran. Nafisi reports that "certain books had been banned as morally harmful"⁶⁰⁵ or "politically objectionable."⁶⁰⁶ "Fires were set to publishing houses and bookstores for disseminating immoral works of fiction."⁶⁰⁷ Iran's xenophobia spread from inside Iran to the rest of the world. In Iran discriminatory treatment of religious minorities, such as Bahias and Armenians, is pervasive. Minorities face constant threats, and they can not even be buried in the same graveyard as Muslims.⁶⁰⁸ Anti-semitism also abounds in Iran, and the recent case of thirteen Iranian Jews accused and convicted unjustly for their alleged spying and affiliation with Israel aroused suspicion and controversy worldwide.

According to Article 19 of the ICCPR, "[e]veryone shall have the right to hold opinions without interference" and "have the right to freedom of expression.... orally, in writing or in print, in the form of art, or through any other media of his choice."⁶⁰⁹ Protestors during the Revolution were often beaten or arrested for passing out leaflets.⁶¹⁰ Any critics of the new regime or of its laws were deemed "enemies," "against Islam," and "counterrevolutionar[ies]," and these victims of oppression "faced, often as not, the firing squad."⁶¹¹ Secular women who initially refused to wear the veil were fired from their positions⁶¹² and then pushed out because of their ideological beliefs and expressed opinions.⁶¹³ Today all women in Iran must wear at least the headscarf, if not the *chador*.

The Iranian post-Revolutionary regime understood the power of the word. Those who did not support the war and wrote or even spoke about it were considered unpatriotic and faced severe consequences.⁶¹⁴ As in the repressive Soviet regime, the Iranian government actually killed writers and poets such as Ahmad

603. NAFISI, *supra* note 11, at 273.

604. *Id.* at 211.

605. *Id.* at 108.

606. EBADI, *supra* note 24, at 66.

607. NAFISI, *supra* note 11, at 136.

608. *See, e.g.*, NAFISI, *supra* note 11, at 230.

609. ICCPR, *supra* note 556, at art. 19.

610. NAFISI, *supra* note 11 at 191.

611. EBADI, *supra* note 24, at 52.

612. NAFISI, *supra* note 11, at 152-53.

613. *Id.*

614. *Id.* at 158-59.

Mir Alai and Jahangir Tafazoli.⁶¹⁵ The government made attempts to kill any intellectual who did not support the Islamic regime.⁶¹⁶ On a manhunt, the Islamic Republic began searching for writers, poets and intellectuals, sending death squads to assassinate them one by one.⁶¹⁷ Some were detained, tortured, and imprisoned for several years⁶¹⁸ while many others died under mysterious circumstances⁶¹⁹ or were even blatantly murdered.⁶²⁰ "Reporters were jailed, magazines and newspapers closed and some of our best classical poets, like Rumi and Omar Khayyam, were censored or banned."⁶²¹

In Article 21 of the ICCPR, "the right of peaceful assembly shall be recognized."⁶²² After the Revolution, the ability for writers and intellectuals to meet in public or in private was drastically curtailed by the government.⁶²³ Unmarried men and women were not allowed to be alone together, so dating couples often "borrow[ed] a young niece or nephew on their evenings out, to appear as a family and pass through checkpoints unmolested."⁶²⁴ "Young people risked being intercepted by the morality police simply for venturing into the mountains together for a hike."⁶²⁵ Nafisi herself was forced to cut short her meetings with her "magician" during police raids of a public café.⁶²⁶ Even Nafisi's class with her girls had to remain a secret.⁶²⁷

Article 23 of the ICCPR refers to marriage and family rights, declaring that "no marriage shall be entered into without the free and full consent of the intending spouses."⁶²⁸ Once the Islamic Regime took power, Khomeini lowered the acceptable age of marriage from eighteen to nine.⁶²⁹ This increased forced marriages in post-Revolutionary Iran. While women of Nafisi's age had been able to choose a spouse for love, the women students in her class now had little choice, and their younger sisters would have even less.⁶³⁰ Fathers often chose husbands for their daughters, confining them to perpetual domestic life rather than letting them pursue their education.⁶³¹ Marriage became more of a family agreement with the parents making the important decisions, rather than a decision of the intended bride and groom. Women can not easily obtain a divorce by initiating the procedures in a family law court. One woman was so miserable in her marriage that when her

615. *Id.* at 310.

616. NAFISI, *supra* note 11, at 308; EBADI, *supra* note 24, at 128-29.

617. *See* EBADI, *supra* note 24, at 129-32.

618. *Id.* at 134-35.

619. *See id.* at 132.

620. *Id.* at 137.

621. NAFISI, *supra* note 11, at 136.

622. ICCPR, *supra* note 556, at art. 21.

623. NAFISI, *supra* note 11, at 309; EBADI, *supra* note 24, at 130.

624. EBADI, *supra* note 24, at 96.

625. *See id.* at 180.

626. NAFISI, *supra* note 11, at 312-13.

627. *Id.* at 3.

628. ICCPR, *supra* note 556, at art. 23.

629. NAFISI, *supra* note 11, at 261.

630. *Id.* at 259.

631. EBADI, *supra* note 24, at 106-07.

husband would not grant her a divorce, she “doused herself with gasoline and lit herself ablaze.”⁶³² Self-immolation by women in Iran is a much too common occurrence, a sign of the hopelessness of women in search of basic human rights that are provided by international treaties but unavailable to them because of failed enforcement by the Iranian State.

Finally, according to Article 26 of the ICCPR, “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”⁶³³ As noted above, women “under law, [a]re considered to have half the worth of men,”⁶³⁴ and they are often treated unfairly by family court judges.⁶³⁵ Women, including Shirin Ebadi, were removed from their positions of power as judges⁶³⁶ or from ministerial positions, merely because they are women.⁶³⁷ Women are also treated far more harshly by the criminal system than are men accused of committing the same crimes.⁶³⁸ After the Revolution, as women became more aware of their rights and also of their oppression, the suicide rate of women rose, “commonly taking the form of self-immolation.”⁶³⁹

C. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights⁶⁴⁰ (ICESCR) is the second of the two major international human rights treaties that embodies many of the principles found in the Universal Declaration of Human Rights.⁶⁴¹ The ICESCR sets forth the second generation economic, social and cultural rights, such as the right to work, the right to social welfare programs, and the right to take part in the cultural life of the country.⁶⁴² Iran signed the ICESCR in 1968 and ratified it without reservations in 1975. Thus, Iran may not take any actions that are inconsistent with the object and purpose of the ICESCR.⁶⁴³

State parties to the ICESCR must “guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁶⁴⁴ In Iran, preferential treatment of men begins at an

632. *Id.* at 108-09.

633. ICCPR, *supra* note 556, at art. 26.

634. NAFISI, *supra* note 11, at 261.

635. *Id.* at 273.

636. EBADI, *supra* note 24, at 48.

637. NAFISI, *supra* note 11, at 261-62.

638. *Id.* at 261.

639. EBADI, *supra* note 24, at 109.

640. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) U.N. Doc. (Dec. 16, 1966) available at http://www.unhcr.ch/html/menu3/b/a_cescr.htm [hereinafter ICESCR].

641. UDHR, *supra* note 557.

642. See generally Barbara Stark, *The “Other” Half of the International Bill of Rights as a Postmodern Feminist Text*, in THE AMERICAN SOCIETY OF INTERNATIONAL LAW, RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW 19, 21 (1993).

643. Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, U.N. Doc. A/CONF. 39/29 (May 23, 1969).

644. ICESCR, *supra* note 640, at art. 2 (emphasis added).

early age. Men and boys “enjoy an exalted status” in the household and they remain at “the center of the family’s orbit.”⁶⁴⁵ As children grow older, the rights of boys expand “while the girls’ contract[ed].”⁶⁴⁶ Men have relative autonomy in Iranian society while women are given fewer rights than men,⁶⁴⁷ and women are considered inferior to men in the workplace.⁶⁴⁸ Women in Iran may only travel with their husband’s permission.⁶⁴⁹ Judges often treat men with preference in domestic matters, even if the men have a past record of domestic violence.⁶⁵⁰ In addition, women are punished more severely than men in criminal matters and crimes such as “adultery and prostitution [which are] punished by stoning to death.”⁶⁵¹

Article 3 of the ICESCR requires that “States... undertake to ensure the equal right of men *and* women to the enjoyment of all... social and cultural rights...”⁶⁵² After the Revolution, women’s participation in the arts was severely restricted.⁶⁵³ In a country where all people love Persian poetry and music, it is amazing that dancing and singing were gradually eliminated altogether.⁶⁵⁴ Women now are still unable to participate in sports and unable even to be spectators at men’s events.⁶⁵⁵ At a music concert, the management admonished the crowd that “if anyone acted in an un-Islamic manner, he or she would be kicked out. He went on to instruct women to observe the proper rules and regulations regarding the use of the veil.”⁶⁵⁶ Women may not socialize with men in public, and women are not permitted to sit in the same classrooms with men.⁶⁵⁷ “[E]ven the lunch tables in the [university] cafeteria were segregated.”⁶⁵⁸

Article 7 of the ICESCR addresses “the right of everyone to the enjoyment of just and favorable conditions of work.”⁶⁵⁹ Section (a)(i) of Article 7 further provides that all workers are entitled to “[f]air wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men.”⁶⁶⁰ Section (c) of Article 7 guarantees “equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.”⁶⁶¹ During the Iran-Iraq war, women worked

645. EBADI, *supra* note 24, at 11.

646. *Id.* at 11.

647. NAFISI, *supra* note 11, at 261.

648. *Id.* at 261; EBADI, *supra* note 24, at 75.

649. *See* NAFISI, *supra* note 11, at 286.

650. *Id.* at 273; EBADI, *supra* note 24, at 123.

651. NAFISI, *supra* note 11, at 261.

652. ICESCR, *supra* note 640, at art. 3 (emphasis added).

653. *See, e.g.*, NAFISI, *supra* note 11, at 108.

654. *Id.*; EBADI, *supra* note 24, at 181.

655. *Iran Women Sports Ruling Vetoed*, *supra* note 537.

656. NAFISI, *supra* note 11, at 300.

657. EBADI, *supra* note 24, at 106.

658. *Id.*

659. ICESCR, *supra* note 640, at art. 7.

660. *Id.* at art. 7(a)(i).

661. *Id.* at art. 7(c).

for free, but now women in Iran are demanding pay to cover the rising cost of living.⁶⁶² After the Revolution, women were forced out of positions of prominence within the government, such as judges⁶⁶³ and cabinet ministers,⁶⁶⁴ and they were reduced to accept only administrative and clerical positions.⁶⁶⁵ Women were then and are now still denied “promotion[s] and permanence” at work because of their past political affiliations⁶⁶⁶ or simply because they are women.⁶⁶⁷ “[M]ale superiors will not look [women] in the eye,”⁶⁶⁸ and they “reward... [women’s] exceptional work with something akin to envy.”⁶⁶⁹

VI. CONCLUSION

There is no doubt that without the popular support of the women in Iran, Ayatollah Khomeini would never have succeeded in leading the Revolution.⁶⁷⁰ Disgusted by the Shah’s excesses, repression, compromises, and conformity to the ideals of the West, all of which seemed contrary to the moral values of Islam, various political forces in Iran struggled to bring about a revolution that would bring the Iranian society back to its traditional values.⁶⁷¹ In the early days of the Revolution, it was not clear whether the leftist movement or the Islamic movement would take control, and the Islamists, with the support of the US government, gradually eliminated any opposition from the left, the intellectuals, or secular voices within the government structures.⁶⁷²

Khomeini continued to listen to the demands of his women constituents whose rights were being paradoxically expanded on certain levels and drastically reduced on other levels.

The paradoxical state of women’s human rights in Iran is represented effectively in the humanities. Women writers like Azar Nafisi and Shirin Ebadi both fight for women’s rights one from outside and the other from inside Iran. This is true as well for the filmmakers Ziba Mir-Hosseini and Tahmineh Milani, both of whom directed and produced feminist films that shed light on the deplorable conditions of women in Iran today. In her book *Iran Awakening*, Shirin Ebadi engages in active and public protest while Azar Nafisi’s memoir, *Reading Lolita in Tehran*, uses a more passive, private form of resistance. Ebadi writes in a direct, legal, personal and even passionate style that persuades and excites the reader to respond. Nafisi transmits messages through a more indirect, highly imaginative,

662. Roksana Bahramitash, *Revolution, Islamization, and Women’s Employment in Iran*, 9 BROWN J. WORLD AFFAIRS 235 (2002).

663. EBADI, *supra* note 24, at 48.

664. NAFISI, *supra* note 11, at 262.

665. *See* EBADI, *supra* note 24, at 48.

666. NAFISI, *supra* note 11, at 270.

667. *See* EBADI, *supra* note 24, at 75.

668. NAFISI, *supra* note 11, at 328.

669. *Id.* at 288.

670. Halper, *supra* note 17, at 105.

671. *Id.* at 104.

672. *Id.* at 109.

learned, and poetic prose that transports the reader into a state of heightened awareness. These four Iranian women, through the power of the written word and the persuasion of visual images on screen, depict changes developing in the life of Iranian women after the Revolution and now. These changes are reflected in and caused by domestic and international laws and their enforcement. These four women's artistic representations similarly reflect the paradoxes in Iran's totalitarian theocracy that claims to be a democracy.

The status of women's human rights in Iranian society is conditioned by contradictions in the legal and political system of this totalitarian theocracy. Paradoxically, women's rights in Iran today are both expanding and diminishing at the same time. These two faces of Iranian society are represented brilliantly by the feminist cinematographer Tahmineh Milani in her film, *Two Women*, that portrays a modern woman in Iran who may be more symbolic than actual. Ziba Mir-Hosseini's documentary film, *Divorce Iranian Style*, reveals the weaknesses in the Iranian family court system, its domestic laws and procedures that discriminate against women. Only a dynamic interpretation⁶⁷³ of the Koran together with radical transformations of the Iranian legal system and its procedures, and a systematic attempt to enforce the international treaties to which Iran is bound by ratification or by customary international law can provide hope for women's equality.

If justice and equality are intrinsic values in Islam and the *Shari'a*, why are justice and equality not reflected in the Iranian family laws that treat women as second class citizens, put women under men's domination, and strictly regulate gender relations and the rights of men and women unfairly?⁶⁷⁴ Despite the movement backwards since 1979 particularly with regard to the enactment of family laws that discriminate against women in Iran, there is intense social pressure in Iran to change these laws and customs. Demographic developments in Iran constitute hope for the protection of human rights for women. Seventy percent of the population in Iran is below the age of thirty, and the young people in Iran want more freedom. There are twenty-two million students in Iran, and seventy percent of university students are women. Educated Iranian women who cannot find expression for their learning and young Iranian people who are frustrated by oppression make a volatile combination poised for transformation, if not revolution!

The burgeoning feminist movement in Iran wants more rights for women and more protective laws. Ideally, this feminist movement should be engaged more systematically in demanding the enforcement of the international human rights treaties to which Iran is a signatory. The populist movement in Iran wants to separate religion and the State, which could result in a diminution of the appreciation of *Shari'a* law and its application in private family matters directly affecting women. The development of a new gender discourse and the rise of a

673. "...Sharia is not inherently inimical to women's rights...the question of who gets to interpret Sharia is critical." Isobel Coleman, *Women, Islam, and the New Iraq*, 85 FOREIGN AFF. 24, 26 (2006).

674. Mir-Hosseini, *Women's Quest*, *supra* note 375, at 629.

popular reformist movement in Iran are positive signs of the emergence of more equality for women within an Islamic framework.

In the 1990s, feminist readings of Islam were tolerated as the process of the Islamization of Iran continued to take place. While the ruling clerics continue to validate a patriarchal interpretation of the Koran and its translation into the laws of the Iranian courts, there is movement in Iran today to consider the legitimacy of a more dynamic interpretation of the Koran that would extend more protection to women and expand their rights through the laws. While Khomeini's office restored the *Shari'a* in order to "protect the family" and to realize women's "high status" in Islam, women are treated as second class citizens in the law, in society, and in the family structure that is decidedly patriarchal in Iran. Women can not understand why husbands can divorce them automatically without even first securing their consent. Iranian women are justified in asking, "Is this what the *Shari'a* says?... Is this how Islam honors women? Is this the justice of Islam?"⁶⁷⁵ Rather than "producing the intended... marital harmony or a generation of docile wives," the return to *Shari'a* in 1979 "further exposed and accentuated the gap between the patriarchal assumptions [about] marriage... [and the kind of] egalitarian marriage lived and experienced by most people today."⁶⁷⁶

There is hope for women's human rights in Iran. Change will likely happen in Iran because of the emergence of a "sustained, indigenous feminism." The rise of an activist feminist movement in Iran has been delayed for many reasons other than the obvious fear of repression and reprisals. Women in Islam and in Iran are the symbols of cultural authenticity, the carriers of a religious tradition and a way of life. Thus, any form of dissent by women could be construed as a betrayal of their Muslim and/or Iranian identity,⁶⁷⁷ and protest could, by extension, be construed as treasonous and pro-Western. Because of compulsory *hejab* and the multiplicity of meanings underlying women's dress wear, women in Iran have to choose between their Muslim identity and their new gender awareness.⁶⁷⁸ This is a hard and dangerous choice that is unfairly imposed on women alone.

Islamic feminists are now engaged in finding the sources for so-called Islamic traditions that discriminate against them and force women to wear clothing that is cumbersome and renders them all the more dependent on men. Many studies show that men's unilateral rights to divorce and polygamy are not textually granted to them by the Koran or by God but were given to men by Muslim male jurists.⁶⁷⁹ Iranian feminists⁶⁸⁰ now focusing attention on Koranic interpretation (*tafsir*) have

675. *Id.* at 635.

676. *Id.* at 636.

677. *Id.* at 639.

678. *Id.*

679. *Id.* at 642.

680. See *id.*, at n.22 for a list of works showing how the Koran and Islam's sacred texts have been tainted by "the ideologies of their interpreters." See generally, Azizah Al-Hibri, *Islam, Law, and Custom: Redefining Muslim Women's Rights*, 12 AM. U. J. INT'L L. & POL'Y, 1-44 (1997), Kecia Ali, *Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce Law*, in PROGRESSIVE MUSLIMS 163, 163-89 (Omid Safi ed., 2003), ASGHAR ALI ENGINEER, *THE RIGHTS OF WOMEN IN ISLAM* (St. Martin's Press 1992), Farid Esack, *Islam and Gender*

successfully uncovered the Koran's egalitarian message.⁶⁸¹ If continued, this belief in the power of interpretation is the clearest sign of hope for equality of women in Iran. The work of the Islamic feminists⁶⁸² should be examined in this light. By both uncovering a hidden history⁶⁸³ and by rereading textual sources, women will come to see that there are two opposing views of Islam. One view is absolutist and legalistically inflexible with regard to the acceptance of modernity. The other view is pluralistic and tolerant, especially of equality between men and women. The new emphasis on interpretation of the original sacred texts will reveal that the inequalities embedded in Iranian law are not the manifestations of a divine will written into the Koran. Iranian jurisprudence is not the product of an inseparable bond between religion and the State. Iranian jurisprudence is not the product of a primitive, backward social system. The law and its system are human constructions that reflect political and ideological agendas of the controlling class. When Khomeini called back *Shari'a* law in Iran, this came with a forceful attempt "to impose anachronistic jurisprudential constructions of gender relations"⁶⁸⁴ upon Iranian society whose women, unfortunately, suffer the most in the name of the preservation of tradition and national identity.

Why should women's equality be dependent upon ideological influences and patriarchal beliefs that filter people's personal and politically-charged interpretations of sacred texts? Rigid originalist interpretations put Islam and women's rights into a closed, static, and inflexible legal system that breeds unfairness to women, gender inequality, and unhealthy social relationships between men and women. To open this closure and liberate women in Iran, the feminists must overcome specious dichotomies,⁶⁸⁵ established for self-serving reasons by men, between Islam and feminism, tradition and modernity, the quest for protection of Iranian national/religious identity, and the fear of equality that comes from integration and exposure to cultural difference in the course of international relations. Women's liberation from human rights abuse in Iran is an issue deeply entrenched in semiotics and a serious matter of interpretation.

Justice: Beyond Simplistic Apologia, in WHAT MEN OWE TO WOMEN: MEN'S VOICES FROM WORLD RELIGIONS 187, 187-210 (John C. Rianes & Daniel C Maguire eds., 2001). HAIFAA JAWAD, THE RIGHTS OF WOMEN IN ISLAM: AN AUTHENTIC APPROACH (St. Martin's Press 1998), Ziba Mir-Hosseini, *The Construction of Gender in Islamic Legal Thought and Strategies for Reform*, 1 HAWWA 1, 1-18 (2003), and Amira El-Azhary Sonbol, *Rethinking Women and Islam*, in DAUGHTERS OF ABRAHAM: FEMINIST THOUGHT IN JUDAISM, CHRISTIANITY, AND ISLAM 108, 108-46 (Yvonne Yazbeck Haddad & John L. Esposito eds., 2001). See also Mir-Hosseini, *Women's Quest*, *supra* note 375, at n.19 (providing a list of literature on Islamic feminism and its politics).

681. Mir-Hosseini, *Women's Quest*, *supra* note 375, at 642.

682. To some the term "Islamic feminism" is an oxymoron. See Nayereh Tohidi, *Islamic Feminism: Perils and Promises*, 16 MEWS REVIEW 1 (2001), available at <http://www.amews.org/review/reviewarticles/tohidi.htm>.

683. See Mir-Hosseini, *Women's Quest*, *supra* note 375, at 642.

684. *Id.* at 644.

685. See Abdullahi An-Na'im, *The Dichotomy Between Religious and Secular Discourse in Islamic Societies*, in FAITH AND FREEDOM: WOMEN'S HUMAN RIGHTS IN THE MUSLIM WORLD 51, 51-60 (Mahnaz Afkhami ed., 1995).

