

The Position and Influence of Islamic Sciences in Contemporary Iranian Legislation

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Abstract

Contemporary legislation in Iran began in 1906 with the establishment of Iran's first legislative assembly. Like any other country, Iran has its own laws across constitutional law, civil law, criminal law, and the like. In Iran, Islam plays a central role in shaping social and legal principles. The practical manifestation of this influence relates to certain branches of the Islamic sciences that have specifically affected contemporary Iranian legislation. Sciences of Fiqh, Science of Usul al-fiqh and the science of qawā'id al-fiqh are among the Islamic disciplines that occupy a special position in contemporary Iranian law and legislation. The question of this article — written in a descriptive-analytical method — is how and to what extent Islamic sciences influence the legislative system in Iran. This study demonstrates the hypothesis that Islamic sciences have formed the main framework for drafting laws, including the Constitution law, the Civil Code, and the Criminal Code. Despite the influence of Islamic sciences on modern Iranian legislation, the main contemporary challenge is the harmonization between Islamic sciences and the modern social and legal needs of Iran. The author argues that the future of legislation in Iran and the continued influence of Islamic sciences on the legislative process will depend on the ability of jurists and legislators to interpret Islamic sources in a dynamic and rational manner.

Keywords: contemporary legislation, statutory laws of Iran, fiqh, usul al-fiqh, qawā'id al-fiqh

1. Introduction

Legislation in any society rests upon that society's worldview, culture, and values. Contrary to the theory of separation of religion from politics and law that prevailed especially in Europe after the Renaissance in the 15th century, religion has always influenced politics in Iran generally and legislation in particular. In Islamic countries, including Iran, Islam plays a pivotal role in shaping moral, social, and legal principles. The practical manifestation of this approach relates to certain branches of the Islamic sciences that have specifically influenced contemporary Iranian legislation. Science of Fiqh (Islamic jurisprudence), science of Usul al-fiqh (principle of Islamic jurisprudence) and the science of qawā'id al-fiqh (the rules of Islamic jurisprudence) are among the Islamic sciences that hold a special and significant influence in Iranian law and legislation. In this study, the influence of these sciences on Iran's most important laws — namely the Civil Code and the Criminal Code — is analyzed. Understanding the impact of Islamic sciences on Iranian statutory law and the Iranian legislative system helps us grasp the cultural and religious roots of Iran's contemporary legal system.

The modern legislative system in Iran dates back to the Constitutional Revolution of 1906. The post-Constitutional Revolution era may be divided into two distinct subperiods: the period before the 1978 Islamic Revolution and the period after the Islamic Revolution. This study examines the position and influence of Islamic sciences both before and after the Islamic Revolution. Using a descriptive-analytical method, the main question of this research is how certain Islamic sciences have influenced modern Iranian legislation. In other words: How have Islamic sciences affected the legislative system in Iran? The hypothesis of this research is that Islamic sciences, to varying degrees, have always influenced contemporary Iranian legislation and have shaped the principal framework for drafting laws — including the Constitution law, the Civil Code, and the criminal Code — and therefore occupy a special place. To answer this question and test the hypothesis, the first section briefly outlines the history of modern legislation in Iran. The second section briefly surveys the Islamic sciences considered by the author. The third section examines the influence of these sciences on the Civil Code. The fourth section explains their influence on the Islamic criminal Code.

2. A Brief History of Modern Legislation in Iran

The establishment of Iran's first legislative assembly dates back to the Constitutional Revolution of 1906. Therefore, one may say that contemporary legislation in Iran began in 1906, and prior to that, religious (shar'i) and customary laws governed Iranian society. For example, the original Constitution of Iran was signed by Mozaffar ad-Din Shah in 1906. Iran's Civil Code — which can be considered the basis of modern Iranian law — was enacted in stages in 1928, 1934, and 1935, with minor amendments adopted in 1982. Iran's modern Commercial Code was promulgated in 1932. The first modern Criminal law adopted by the legislative assembly was the General Criminal Code in 1925.

It should be noted that four major legal systems are recognized in the world today: the Roman-Germanic system, the common law system, the Islamic system, and the socialist legal system (Rafiei, 2022, p. 95). One can say that Iran's legal system is a hybrid of the Islamic legal system and, in some aspects, influenced by the Roman-Germanic legal system. The legislative assembly of Iran, named the National Consultative Assembly (Majles-e Showrā-ye Melli), existed from 1906 until 1989, and during the 1989 constitutional revision of the Islamic Republic of Iran the assembly's name was changed to the Islamic Consultative Assembly (Majles-e Showrā-ye Eslāmi).

Like other political societies, Iran has distinct laws governing constitutional law, civil law, criminal law, and so forth, in which religion, ethics, customs, and scientific legal theories are taken into account (Imami, 1987, p. 4). Religion is one of the important constitutive sources of law even in countries that do not have an official state religion (Katoozian, 2003, p. 62) and that claim separation of religion and law, such as jurisdictions in the Roman-Germanic and common law families. In Iran not only is Islam the state religion, but civil and criminal laws are also grounded in Islamic teachings; consequently, Islam has a very significant position and influence in contemporary Iranian legislation. The historical foundations and bases of legislation in Islam have evolved continuously in a developmental process. Unlike the Western experience, in which —

after the Renaissance — the divine-based source of law was separated from lawmaking based on the interests and will of the people, in Islam these two kinds of sources have developed in parallel and have functioned as complementary and evolutionary elements (Fatemeh Jangjuy and Hossein-Ali Kalehar, 2021, p. 6).

Today, in the Islamic Republic of Iran the principal legislative body is the Islamic Consultative Assembly; however, this Assembly is not the only legislative institution, and the enactment of a law in Iran requires confirmation by several other bodies, including:

١. Islamic Consultative Assembly (Parliament): Members of parliament propose, review, and vote on laws. Bills are submitted by the government and proposals are introduced by members; they are examined in specialized committees and then voted on in the plenary session.
٢. Guardian Council (Shorā-ye Negahbān): All acts passed by the Islamic Consultative Assembly must conform to Islamic law (Sharī'a) and the Constitution law. The Council can veto legislation and return it to the parliament for amendment.
٣. Expediency Discernment Council (Majma' -e Tashkhis-e Maslahat-e Nezām): Where the Majles and the Guardian Council disagree, the Expediency Council makes the final decision. Thus, the Expediency Council also plays an important legislative role.
٤. The Executive (Government): The executive branch actively participates in the legislative process through bills. The Government is also responsible for implementing laws and issuing regulations.

It should be noted that the legislative process in Iran is multi-staged: Stage One: Proposal of law by Majles members (as a plan) or by the Government (as a bill). Stage Two: Examination in specialized committees such as the Legal and Judicial Committee, Education Committee, Budget Committee, Health Committee, Security Committee, etc. Stage Three: Review and voting in the Majles plenary; adoption requires a relative majority of those present. Stage Four: Submission to the Guardian Council for review of conformity with Sharī'a and the Constitution law, and final approval or rejection. Stage Five: Resolution of disagreements if necessary; if the Majles and the Guardian Council disagree, the issue is submitted to the Expediency Council. Stage Six: Promulgation and implementation. After approval, the law is promulgated by the President and implemented.

Some characteristics of contemporary legislation in Iran may be highlighted, including:

١. A hybrid of two legal systems sharī'a and statutory: Iranian laws are influenced by Islamic fiqh as well as modern administrative and economic requirements.
٢. A prominent role for supervisory institutions: The Guardian Council of the Constitution law, and the Expediency Council exert significant influence over the legislative process.
٣. Expansion of legislation in modern fields: There has been growth in legislation on modern topics such as information technology and cyberspace, the environment, electronic commerce, novel taxation, and citizens' rights.

It should be recalled that contemporary Iranian legislation faces several challenges, such as institutional complexity, overlapping authorities, slowness in reforming outdated laws, rapid social change, and the need for new legislation. On the other hand, since legislation based on Islam depends on the sources of *ijtihād* (individual legal reasoning by a Muslim Jurist) — i.e., the Quran, the Sunnah, *ijma'* (consensus of opinions among Muslim Jurists and reason— it is evident that if the sources of *ijtihād* (the jurists' derivations from the four primary sources with the aim of issuing rulings and laws) are to respond to new phenomena in all social, economic, and especially legal dimensions of legislation in Iran, dynamic *ijtihād* by jurists must be employed (Mohaqeq-Damad, 2006, p. 12).

3. Islamic Sciences

3.1. Definition

Various definitions can be offered for “Islamic sciences.” Islamic sciences comprise a set of knowledges such as *fiqh*, *Usul al-fiqh*, *qawā'id al-fiqh*, *tafsīr* (Qur'anic exegesis), *ḥadīth* studies, *kalām* (theology), and ethics, which are based upon the Quran and the Prophet's Sunnah. For example, the exegesis of verses related to justice, human rights, economics, family, and politics has influenced the laws of Islamic countries, including Iran. Likewise, ethics has influenced legislation. In an Islamic system, law does not concern only external order but is formed upon moral and spiritual values. The ultimate goal of law is to guide humans toward perfection and social justice, not merely to control behavior. In fact, law in Iran is not simply an instrument of order but a means of realizing justice and human values. Nevertheless, the main contemporary challenge remains the harmonization of religious teachings with modern social and legal needs. The future of modern legislation in Iran depends on the ability of jurists and lawmakers to interpret religious texts dynamically and rationally.

It should be noted that the principal sources of law and, consequently, of *ijtihād* in Islam are the Quran, the Sunnah (or *ḥadīth*), *ijmā'*, and reason; in some Islamic schools of thought, *qiyās* (analogical reasoning), *istihsān* (juristic preference), and *'urf* (custom) are also recognized (Janāti, 1991, p. 3). Historically, jurists played a central role in formulating legal rulings, court systems, and even political structures. Islamic sciences are those fields whose subject matter and issues are the principles or the branches of Islam, or those sciences upon which the principles and branches of Islam are established— such as Quranic exegesis, *hadith* studies, and Islamic jurisprudence. It may also be stated that Islamic science, in addition to the science mentioned in the first definition, include Arabic literature, rational theology, logic, the principles of jurisprudence, and the like (motahhari, 1979, pp.10-11). Islamic sciences — especially *fiqh*, *Usul al-fiqh*, and Qur'anic exegesis — have shaped the main framework for drafting civil, criminal, social, and economic laws in Islamic societies, including Iran. Consequently, *fiqh*, *Usul al-fiqh*, and *qawā'id al-fiqh* are undoubtedly subfields of the Islamic sciences that should each be defined separately.

3.1.1. Science of Fiqh (Islamic Jurisprudence)

Fiqh, as the science of understanding and deriving sharī‘a rulings, constitutes the basis of civil and criminal laws in many Islamic countries, including Iran. For example, in Iran, Saudi Arabia, Pakistan, Egypt, and Morocco, a substantial part of family law, inheritance, marriage, and divorce derives from Islamic fiqh. Fiqh is the knowledge concerned with practical rulings — that is, matters directed at human action and how those actions ought to be performed. In other words, fiqh’s subject matter is legal norms and regulations (Mutahhari, 1979, pp. 54–55). In fact, “science of fiqh is the knowledge of sharī‘a rulings and the law of minor and social duties of Muslims” (Janāti, 2006, p. 17). More precisely, fiqh is the science of exact comprehension of practical matters; in the common parlance among jurists, fiqh denotes the precise and reasoned knowledge of subsidiary sharī‘a rulings based on their detailed evidences (Collective Authors, 2002, p. 18). Accordingly, in various domains — including statutory civil and criminal law — fiqh is applied to identify rulings according to Islamic standards. A significant portion of Iran’s Civil Code and Criminal Code has been organized on the basis of fiqh, which will be examined in later sections.

3.1.2. Science of Usul al-Fiqh (Principles of Islamic Jurisprudence)

Usul al-fiqh is the methodological tool for ijtihād and extraction of laws. It assists legislator in deriving appropriate laws for new circumstances from the religious texts. This science confers dynamism to fiqh and flexibility to law in the face of social transformations. Usul al-fiqh is considered a preliminary science to fiqh and hence is called the “principles” or “foundations” of fiqh. It is one of the innovative sciences developed by Islamic scholars. Essentially, this science is the methodology of legal derivation — i.e., the correct method of derivation and use of fiqh sources by the jurist (Mutahhari, 1979, p. 9). “Usul al-fiqh is the study of the set of rules, criteria, and tools that assist the jurist in the path of extracting and deriving sharī‘a rulings.” (Qāfi & Shari‘ati, 2019, p. 23). From the viewpoint of some jurists, Usul al-fiqh corresponds to the fundamental evidences for deriving sharī‘a rulings. In other words, the jurist’s derivation of rulings follows specific frameworks and principles, which are Usul al-fiqh (Khorāsānī, 1991, p. 24). Some terms and concepts from Usul al-fiqh find application in the Civil Code and the Islamic Criminal Code; these will be discussed in the upcoming sections.

3.1.3. Science of Qawā‘id al-Fiqh

Qawā‘id al-Fiqh are very general formulas that serve as sources for deriving more specific rules; they are not confined to a particular case but serve as the basis for numerous and varied laws (Mohaqeq-Damad, 2008, p. 2). The science of Qawā‘id al-Fiqh concerns institutions, foundations, general principles, and juristic rules which, due to their generality, apply across diverse subjects. In truth, “the science of Qawā‘id al-Fiqh includes general juristic rulings that are applied across different issues and areas of fiqh — for example, the maxim ‘no harm’ (la ḍarar).” (Mohammadi, 2004, p. 14). Undoubtedly, the science of Qawā‘id al-Fiqh has had an absolute and notable influence on Iran’s statutory law in general and, in particular, on the Constitution law, the Civil Code, and the Criminal Code; this influence will be examined in the forthcoming discussions.

4. The Influence of Fiqh on Legislation in Iran

Fiqh is one of the Islamic sciences that has a significant influence on legislation in Iran and holds a special status. This influence is examined in Iran's most important laws, namely the Civil Code and the Islamic Penal Code.

4.1. The Civil Code

Within Iran's legislative system, the Civil Code is regarded as the principal source of civil law. Today, by "civil law" we mean the exposition and interpretation of the rules contained in the Civil Code, which cover persons and family law, ownership, contracts, and succession (Katoozian, 2003, pp. 88–90). A substantial portion of these topics addressed in the Iranian Civil Code has been organized on the basis of fiqh. In fact, fiqh is the primary source of the Civil Code. One commentator on the Civil Code argues: "With the Civil Code, fiqh — which until that time had been confined exclusively to the jurists — was removed from that exclusivity, and its essentials, that is the jurists' core positions, were rendered anew." (Shayegān, 1960, pp. 35–36). Except in rare cases, the Civil Code has followed the prevalent opinions of the Imami jurists and has been based on fiqh (Imami, 1987, p. 5). It may be said that the Iranian Civil Code is a translation of jurists' expressions derived from fiqh (Pāshā Šāliḥ, 2016, p. 261). Ultimately, regarding the status and influence of fiqh in the Iranian Civil Code, it has been said: "The Civil Code, in truth, was the codification of existing Imami fiqh in the form of a state law." (Amīn, 2003, p. 541).

Below are some provisions of the Civil Code that were drafted on the basis of fiqh, one of the branches of the Islamic sciences.

4.1.1 . On Contract of Sale

Article 338 of the Civil Code provides: "Sale (bai') is the transfer of ownership of a thing in exchange for a known consideration." The wording of this article is taken from the fiqhic text in the book *Sharh al-Luma'a*, which is a comprehensive fiqh manual collecting the authoritative fatwas of Imami jurists, and reads: "And it is offer and acceptance indicating the transfer of ownership for a known consideration." (Shiruwāni & Gharaviyān, 2006, p. 204). Article 345 of the Civil Code states: "Each of the seller and buyer must, in addition to legal capacity for transaction, have the capacity to dispose of the sold item or the price." Article 346 provides: "A sale contract must be accompanied by the consent of the parties, and a coerced contract is void." Article 209 provides: "A signed transaction becomes valid once coercion is removed." The substance of these provisions is also derived from the fiqhic text in *Sharh al-Luma'a*: "It is required of the contracting parties completeness and free will, except that the coerced party may consent after the removal of coercion." (Shiruwāni & Gharaviyān, 2006, p. 205). Article 191 of the Civil Code states: "A contract is realized by the intention of creation provided it is accompanied by something that indicates that intention," and Article 195 states: "If someone contracts while intoxicated, unconscious, or asleep, that transaction is void due to lack of intent." The substance of these two articles is likewise taken from *Sharh al-Luma'a*: "And intent — if the heedless or the sleeper or the joker effects it, it is void." (Shiruwāni & Gharaviyān, 2006, p. 205).

Article 249 of the Civil Code provides: "The silence of the owner, even if present at the contract session, does not constitute authorization." This article is taken from the fiqhic text: "And silence at the contract or when it is offered to him is not sufficient for authorization." (Shiruwāni &

Gharaviyān, 2006, p. 206). Article 256 provides: “If one transfers property of his own and that of another in a single contract or accepts the transfer of property for himself and another, the transaction is valid as to himself and is a void (unauthorized) act as to the other.” The substance of this article is taken from the fiqhic text: “Even if one sold what is not owned together with what is owned, the owner’s right remains in his possession.” (Shiruwāni & Gharaviyān, 2006, p. 206). Article 348 provides: “A sale of something the sale of which is legally prohibited, or something that lacks property value or rational benefit, or something that the seller is unable to deliver, is void, unless the buyer is himself able to take delivery.” The content of this article in Sharh al-Luma‘a reads: “First, it is required that the sold item be among what he owns; second, that it be possible to deliver it; third, that it be free (unencumbered).” (Shiruwāni & Gharaviyān, 2006, pp. 208–210). Article 342 provides: “The quantity, kind, and description of the sold item must be known....” The substance of this article appears in the fiqhic manual as: “It is required that the price be known in quantity, kind, and description.” (Shiruwāni & Gharaviyān, 2006, p. 212).

4.1.2 . On Lease

Article 466 of the Civil Code provides: “Lease is a contract by virtue of which the lessee becomes owner of the benefit of the leased thing....” This provision is taken from fiqh: “And it is the contract for the transfer of a specified benefit for a known consideration....” (Shiruwāni & Gharaviyān, 2006, p. 9). Article 498 provides: “If the leased thing is transferred to another, the lease remains in force.” This provision is derived from the fiqhic text: “And it is obligatory upon both parties, and even if sale follows it, it is not annulled....” (Shiruwāni & Gharaviyān, 2006, p. 9). Article 497 provides: “The contract of lease is not annulled by the death of the lessor or the lessee.” This provision is taken from fiqh: “...and it is not annulled by death....” (Shiruwāni & Gharaviyān, 2006, p. 10). Article 471 provides: “For the validity of a lease, it must be possible to use the leased thing while preserving its substance.” The substance of this article is taken from Sharh al-Luma‘a: “And whatever can be validly used while the thing itself remains, its lease is valid....” Article 478 provides: “If it is discovered that the leased thing had a defect at the time of the lease, the lessee may rescind the lease.” The substance of this article, based on fiqh, reads: “Even if a defect appears in it, the lessee may rescind or seek compensation with specification....”

4.1.3. On Agency

Article 656 of the Civil Code provides: “Agency is a contract by virtue of which one party appoints the other as his deputy for the performance of an act.” the agency is deputization in disposition). Article 678 provides: “Agency is terminated in the following ways: 1. by the principal’s dismissal... 3. by the death or insanity of the agent or the principal.” This clause’s substance is based on fiqh: “And it is nullified by death and insanity and fainting.” Article 672 provides: “An agent may not delegate the matter he was authorized to do to another unless he is expressly or by indication authorized to do so.” The substance of this article from fiqh reads: “And the agent may not appoint another except with explicit or implicit permission....” Article 663 provides: “An agent may not perform an act that is beyond the limits of his agency.” The fiqhic formulation reads: “And the agent must not exceed what is limited to him....”

5. The Influence of Usul al-Fiqh on Legislation in Iran

Below we examine some provisions of the Civil Code that were drafted on the basis of Usul al-fiqh, one of the branches of the Islamic sciences.

5.1. The Civil Code

5.1.1 . Principle of Generality (Asl-e ‘Umūm)

Article 5 of the Iranian law provides: “All residents of Iran, whether nationals or foreigners, are subject to the laws of Iran except in cases where the law has excepted them.” If there is doubt about the application of this article to stateless persons residing in Iran, by reference to the principle of generality we may say: the phrase “all residents of Iran” is general and includes such persons as well (Qāfi & Shari‘ati, 2019, p. 114). Article 190 of the Civil Code provides: “For the validity of any transaction the following conditions are essential...” This article doubtlessly includes specified contracts such as sale and lease. But if there is doubt about its application to unspecified contracts, by virtue of the principle of generality, we may say the above article is general and, by its generality, also embraces unspecified contracts.

5.1.2 . Principle of Apparent Meaning (Asl-e Zuhoor)

Article 224 of the Civil Code provides: “The words of contracts are to be understood according to their customary meanings.” That is, the words used by the contracting parties at the time of contracting are construed according to their customary, apparent meanings. A practical example of applying this principle can be observed in Article 665 of the Civil Code, which states: “Agency in sale does not imply agency to take receipt of the price, unless there is conclusive evidence indicating it.”

5.1.3 . Principle of Reality (Asl-e-Haqīqat)

Using a word in its real sense does not require corroborating evidence, but using it in a figurative sense requires indication and proof. Thus, if there is no evidence or indication for figurative usage, the word should be taken in its real meaning. In Usul al-fiqh this is referred to as the principle of reality (Jafari Langerudi, 2008, p. 242). The principle holds that the literal meaning is intended unless there is evidence to the contrary (Qāfi & Shari‘ati, 2019, p. 111). For example, the lexical word “mother” denotes a woman who gave birth to a child. However, sometimes the word is used of a woman who suckled another’s child and thereby has a foster (radā‘ī) relationship; this woman is also called “mother.” Now, if a legislative text prescribes a rule for “mother” (Qāfi & Shari‘ati, 2019, p. 112) — for example Article 170 of the Civil Code which provides: “If the mother becomes insane during the period in which she has custody of the child...” or Article 1176 which states: “A mother is not compelled to nurse her child...” — and there is a possibility that the legislator intended by “mother” both the biological mother and the foster (radā‘ī) mother, by reference to this principle we must say the legislator’s intent is the biological mother only (Qāfi & Shari‘ati, 2019, p.112).

6. The Influence of Qawā‘id al-Fiqh on Legislation in Iran

Below we examine some instances in the Civil Code that were drafted based on the science of the rules of Islamic jurisprudence, one of the branches of the Islamic sciences.

6.1. The Civil Code

There are important jurisprudential maxims in the Civil Code; for example, here we consider three maxims: the maxim of possession (qā'ida al-yad) the maxim of damage (atlaf), and the maxim of no harm (la ḍarar).

6.1.1 . The Maxim of Possession

Article 35 of the Civil Code provides: "Possession as an act of ownership is evidence of ownership unless the contrary is proved." Following Imami fiqh, the Civil Code regards possession as a presumption of ownership and considers it operative in respect of corporeal things, usufructs, and existing rights (Mohiqq-Damad, 2008, p. 57).

6.1.2 . The Maxim of Damage

Article 328 of the Civil Code provides: "Whoever causes the destruction (loss) of another's property is liable for it and ..." Article 329 provides: "If someone destroys or damages someone's house or structure, he must restore it to its former form, and if that is impossible he must pay its value." Also, Article 330 provides: "If someone kills another's animal without the owner's permission, he must pay the difference between its live and dead value...." In these provisions the Civil Code expresses and adopts the fiqhic doctrine of liability for loss/damage following the majority opinion of jurists.

6.1.3 . The Maxim of no harm

The Civil Code has accepted the maxim la ḍarar (no harm) on the basis of juridical maxims. It appears, for example, in Articles 65, 114, 122, 132, 138, and 139. For instance, Article 65 provides: "A waqf (pious endowment) that was created with the intention to harm (an individual) shall be subject to that person's permission," and Article 132 of the Civil Code forbids the owner from disposing of his property in any way that entails harm except under certain specified conditions.

6.2. The Islamic Criminal Code

In Iran's legislative system, the Islamic Penal Code is one of the important laws grounded in the Islamic sciences. This influence has been particularly pronounced and foundational since 1978. Below we review some provisions of this law that, as applicable, are shaped by science of fiqh, science of Usul al-fiqh, and science of Qawā'id al-Fiqh.

6.2.1 Science of Fiqh

Here are some articles of the Islamic Penal Code that were formed on the basis of fiqh:

- Article 221 of the Islamic Criminal Code provides: “Adultery is the intercourse of a man and a woman between whom there is no marital bond and which is not among the cases of intercourse by doubt.” The wording of this article is drawn from Sharh al-Luma‘a based on fiqh: “And it is penetration of a sane adult into the vagina of an unlawful woman without marriage contract and without doubt.”
- Article 242 provides: “Pimping (qawādī) is the bringing together of two or more persons for the purpose of zina or sodomy (liwāt).” This provision is taken from fiqh: “And pimping is the gathering between the doers of immorality....”
- Article 295 provides: “The hadd (prescribed corporal punishment) for consuming an intoxicant is eighty lashes.” This article is taken verbatim from fiqhic text: “And the hadd is eighty lashes.”

6.2.2 . Science of Usul al-Fiqh

Below are some articles of the Islamic Penal Code that were shaped by science of Usul al-fiqh:

- Article 675 of the Islamic Criminal Code provides: “Whoever intentionally sets fire to a building, vessel, airplane, factory, warehouse, or, generally, any dwelling place or place intended for habitation, or a forest, threshing-floor, or any kind of agricultural produce, trees, fields, or gardens belonging to another shall be sentenced to imprisonment from two to five years.” According to the principle of reality (literal meaning), the term *ashjār* (trees) in this article denotes its literal meaning — namely, planted trees. Although cut timber might sometimes be called “trees” figuratively, burning them does not fall within the scope of this article. (Qāfi & Shari‘ati, 2019, p. 112). Concerning the offense of destroying crops under Article 684 of the Islamic Penal Code, by the principle of reality this article includes only crops that have grown and does not include seeds that have been sown but not yet sprouted (Qāfi & Shari‘ati, 2019, p. 112).
- Article 2 of the Islamic Penal Code provides: “Any conduct, including act or omission, for which a punishment is prescribed by law is deemed a crime.” Here the general wording is intended to be general in scope according to the principle of generality, and its general meaning should not be narrowed without reason. Moreover, pursuant to this article, where there is doubt whether a certain act is a crime or not, the principle of presumption of acquittal should be invoked and the act should not be considered a crime. In other words, if there is doubt about whether a specific act is criminal, we are in doubt about the existence of a legal obligation; according to principled teachings in such cases one must resort to the presumption of acquittal (Qāfi & Shari‘ati, 2018, p. 92).

6.2.3 . Sciences of Qawā‘id al-Fiqh

For example, one can point to the rule of deterrente (dar) in Articles 120 and 121 of the Islamic Penal Code. Article 120 provides: “If the commission of the crime or some of its essential elements, or any of the conditions of criminal responsibility is subject to doubt or uncertainty and no proof exists to negate that doubt, then, as applicable, the crime or the condition shall not be established.”

Also, reference can be made to the maxim of repentance in Article 114 of the Islamic Penal Code. Article 114 provides: “In hudud crimes (those meriting fixed punishments), with the exception of qadhf (false accusation of adultery) and muharebah (resorting to arms in order to frighten people), if the accused repents before the crime is proven and his remorse and reformation are established to the judge, the hadd is removed.”

The maxim concerning repeated commission of a hudud crime appears in Article 136 of the Islamic Penal Code, which provides: “If a person commits the same type of hudud crime three times and each time the hadd for that crime is applied, his hadd on the fourth occasion is execution.”

7. Conclusion

Legislation in Iranian society, like legislation in other societies, is grounded in the worldview and values of that society. Contrary to the theory of separation of religion and law that prevailed in the West, especially in Europe, in Iran religion has always influenced legislation. From the perspective of legislation, Iran’s legal system is derived from the Islamic legal system and in certain respects has been influenced by the Roman-Germanic legal system. Several branches of Islamic sciences — notably fiqh, Usul al-fiqh, and Qawā’id al-Fiqh - have had a significant influence on contemporary Iranian legislation both before the Islamic Revolution (i.e., since 1906) and after the Islamic Revolution (1978). Understanding the impact of Islamic sciences on the laws and legislative system of Iran is essential for grasping the cultural and religious roots of Iran’s contemporary legal order.

Islamic sciences are science whose subjects and problems are the principles and branches (furū’) of Islam. In other words, Islamic sciences are a set of fields such as fiqh, Usul al-fiqh, Qawā’id al-Fiqh, taf̄s̄ir, and ḥadīth, which are founded upon the sources of ijtihād (for the purpose of issuing Islamic laws) — namely the Qur’an, the Sunnah (i.e., the sayings, deeds, or approvals of the Prophet or the Imams), consensus of opinions among Muslim Jurists and reason. Fiqh, one of the most comprehensive and wide-ranging Islamic sciences, concerns rulings and practical issues — that is, matters intended to regulate human action. Another science among the branches of Islamic sciences is Usul al-fiqh, which is the science of the methodology of derivation i.e. the proper method of extracting rulings and using the sources of fiqh. One of the sciences that plays a role in contemporary legislation in Iran is the science of the rules of Islamic jurisprudence. They are very general formulas that serve as the source for deriving narrower rules; they are not specific to a single case but provide the basis for multiple laws. Undoubtedly, these three branches of the Islamic sciences have played an important role in contemporary Iranian legislation from 1906 to the present.

For example, regarding sale and purchase, Articles 191, 195, 209, 249, 256, 338, 342, 345, and 348 of the Civil Code were legislated on the basis of fiqh. Also, with respect to lease, the provisions of Articles 466, 471, 478, and 498 of the Civil Code were derived from fiqhic texts. Moreover, in the area of agency, Articles 656, 663, 672, and 678 of the Civil Code were organized on the basis of fiqh. Some articles of the Civil Code were drafted according to Usul al-fiqh, such as the principle of generality in Articles 5 and 190, the principle of apparent meaning in Articles 224 and 665, and the principle of reality in Articles 170 and 1176. In addition, the maxim of possession appears in Article 35 of the Civil Code, the maxim concerning damage in Articles 328 and 330, and the

maxim no harm is reflected across several provisions. In the Islamic Penal Code, Articles 221, 242, and 295 were derived from fiqh. Articles 2, 675, and 684 were informed by Usul al-fiqh, and Articles 114, 120, 121, and 136 were framed according to the rules of Islamic jurisprudence. Consequently, it can be said that Islamic sciences — especially fiqh, Usul al-fiqh, and Qawā'id al-Fiqh - have a foundational role in shaping the legislative system in Iran. Legislation in Iran is not merely an instrument of order but a means to realize divine justice and human values. Nevertheless, the principal contemporary challenge is harmonizing Islamic laws with modern social and legal needs. The future of legislation in Iran depends on the ability of jurists and lawmakers to offer dynamic and rational interpretations of the sources of ijtihād.

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References

١. Imami, S.H. (1987). *Civil Law*, Vol. I, 6th ed., Tehran: Eslamiyeh Publications (in persian).
٢. Amin, H. (2003). *History of Iranian Law*, Tehran: Encyclopaedia of Iranology (in persian).
٣. Pasha-Saleh, A. (2016). *The Story of Law: Discussions from the History of Law*, Tehran: University of Tehran Press(in persian).
٤. Jafari Langerudi, M.J. (2008). *Terminology of Law*, 20th ed., Tehran: Ganj Danesh Publishing(in Persian).
٥. Collective Authors (2002). *Law in the Mirror of Fiqh* ,Mashhad: Razavi University of Islamic Sciences(in persian).
٦. Janati, E. (1991). *Sources of Ijtihād from the Perspective of Islamic Schools of Thought*, Tehran: Kayhan Publishing(in persian).
٧. Janati, E. (2006). *Fiqh and Time*, Qom: Office for Islamic Propagation Publications(in persian).
٨. Jangjuy, F. & Kalehar, H. (2021). “Law, Legislation, and Its Role in Desirable Governance in the Islamic Republic of Iran,” Proceedings of the International Conference on Elevated Governance (in Persian).
٩. Khorasani, M. K. (1991). *Kifāyat al-Uṣūl*, Vol. I, Qom: Islamic Publishing Institute(in arabic).
١٠. Rafiei, M. T. (2022). *Comparative Law*, 4th ed., Tehran: Majd Publications(in Persian).
١١. Shayegān, S. A. (1960). *Iranian Civil Law*, 5th ed., Tehran: Taha Publishing(in Persian).
١٢. Shirwani, A. & Gharavian, M. (2006). *Translation and Elucidation of Lum‘ah al-Dimashqiyya*, Vol. I, 28th ed., Qom: Dar al-Fikr Publications(in arabic & in persian).
١٣. Shirwani, A. & Gharavian, M. (2006). *Translation and Elucidation of Lum‘ah al-Dimashqiyya*, Vol. II, 28th ed., Qom: Dar al-Fikr Publications(in arabic & in persian).
١٤. Qāfi, H. & Shari‘ati, S. (2019). *Applied Usul al-Fiqh*, Vol. III, 18th ed., Tehran: SAMT; Qom: Research Institute of Hawza and University Publications(in Persian).
١٥. Qāfi, H. & Shari‘ati, S. (2019). *Applied Usul al-Fiqh*, Vol. I, 18th ed., Tehran: SAMT; Qom: Research Institute of Hawza and University Publications(in Persian).
١٦. *Constitution of the Islamic Republic of Iran*, enacted 1979; revised 1989(in persian).
١٧. *Islamic Criminal Code* ,enacted 2013(in persian).
١٨. *Civil Code of Iran*, enacted in 1928, 1934, and 1935(in persian).

١٩. Katoozian, N. (2003). *Introduction to the Science of Law and a Study of the Iranian Legal System*, 33rd ed., Tehran: Enteshār Joint-Stock Publishing(in Persian).
٢٠. Mohagheh-Damad, S. M. (2006). *Discussions on Usul al-Fiqh*, 14th ed., Tehran: Centre for the Publication of Islamic Sciences(in Persian).
٢١. Mohaqeq-Damad, S. M. (2008), *The Principles of Islamic Jurisprudence, Civil Section (Ownership, Liability)*, 18th ed., Tehran: Centre for the Publication of Islamic Sciences(in Persian).
٢٢. Mohammadi, A. (2004). *The Rules of Islamic Jurisprudence*, 7th ed., Tehran: Mizan Publishing(in Persian).
٢٣. Motahhari, M. (1979). *Familiarity with the Islamic Sciences*, Tehran: Sadra Publications(in persian).

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