Chapter Six:

Status of Human Rights in Iran during Khatami Era – Selected issues
6-1. Preface
This chapter deals with the definition of human rights and their historical development. Then the situation of human rights in Iran and the impact Khatami's government had on changing Iran's human rights record are studied. Human rights refer to the "basic rights and freedoms to which all humans are entitled." Examples of rights and freedoms which are often thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to food, the right to work, and the right to education.

Article 1 of the United Nations Universal Declaration of Human Rights provides:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

6-2. Human Rights Background
The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout recorded history. Several ancient documents and later religions and philosophies included a variety of concepts that may be considered to be human rights. Notable among such documents are the Cyrus cylinder of 539 BC, a declaration of intentions by the
Persian emperor Cyrus the Great after his conquest of the Neo-Babylonian Empire; the Edicts of Ashoka issued by Ashoka the Great of India between 272-231 BC; and the Constitution of Medina of 622 AD, drafted by Muhammad to mark a formal agreement between all of the significant tribes and families of Yathrib (later known as Medina), including Muslims, Jews and Pagans.\(^1\) The English Magna Carta of 1215 is particularly significant in the history of English law, and is hence significant in international law and constitutional law today.

Much of modern human rights law and the basis of most modern interpretations of human rights can be traced back to relatively recent history. The British Bill of Rights (or “An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown”) of 1689 made illegal a range of oppressive governmental actions in the United Kingdom. Two major revolutions occurred during the 18th century, in the United States (1776) and in France (1789), leading to the adoption of the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen respectively, both of which established certain rights. Additionally, the Virginia Declaration of Rights of 1776 set up a number of fundamental rights and freedoms.

These were followed by developments in philosophy of human rights by philosophers such as Thomas Paine, John Stuart Mill and Hegel during the 18th and 19th centuries.

Many groups and movements have managed to achieve profound social changes over the course of the 20th century in the
name of human rights. In Western Europe and North America, labor unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labor. The women's rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. One of the most influential was Mahatma Gandhi's movement to free his nation India from British rule. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them the civil rights movement, and more recent diverse identity politics movements, on behalf of women and minorities in the United States.

The establishment of the International Committee of the Red Cross, the 1864 Lieber Code and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, to be further developed following the two World Wars.

The World Wars and the huge losses of life and gross abuses of human rights that took place during them were a driving force behind the development of modern human rights instruments. The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global welfare. Enshrined in its Charter was a mandate to promote many of the rights which were later included in the Universal Declaration of Human Rights.
At the 1945 Yalta Conference, the Allied Powers agreed to create a new body to supplant the League’s role. This body was to be the United Nations. The United Nations has played an important role in international human rights law since its creation. Following the World Wars the United Nations and its members developed much of the discourse and the bodies of law which now make up international humanitarian law and international human rights law.

6-3. Elements of Human Rights

The most common categorization of human rights is to split them into civil and political rights, and economic, social and cultural rights. Civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights and in the ICCPR. Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights and in the ICESCR. The UDHR included both economic, social and cultural rights and civil and political rights because it was based on the principle that the different rights could only successfully exist in combination. As 1966 International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights reads:

The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his social, economic and cultural rights.
This is held to be true because without civil and political rights the public cannot assert their economic, social and cultural rights. Similarly, without livelihoods and a working society, the public cannot assert or make use of civil or political rights.

Although accepted by the signatories to the UDHR, most of them do not in practice give equal weight to the different types of rights. Western cultures have often given priority to civil and political rights, sometimes at the expense of economic and social rights such as the right to work, to education, health and housing. For example, in the United States there is no universal access to healthcare free at the point of use.\(^2\) That is not to say that Western cultures have overlooked these rights entirely (the welfare states that exist in Western Europe are evidence of this). Similarly the ex Soviet bloc countries and Asian countries have tended to give priority to economic, social and cultural rights, but have often failed to provide civil and political rights.

Opponents of the indivisibility of human rights argue that economic, social and cultural rights are fundamentally different from civil and political rights and require completely different approaches. Economic, social and cultural rights are argued to be:\(^3\)

- positive, meaning that they require active provision of entitlements by the state (as opposed to the state being required only to prevent the breach of rights)
- resource-intensive, meaning that they are expensive and difficult to provide

- progressive, meaning that they will take significant time to implement

- vague, meaning they cannot be quantitatively measured, and whether they are adequately provided or not is difficult to judge

- ideologically divisive/political, meaning that there is no consensus on what should and shouldn't be provided as a right

- socialist, as opposed to capitalist

- non-justiciable, meaning that their provision, or the breach of them, cannot be judged in a court of law

In The No-Nonsense Guide to Human Rights Olivia Ball and Paul Gready argue that for both civil and political rights and economic, social and cultural rights it is easy to find examples which do not fit into the above categorization. Amongst several others, they highlight the fact that maintaining a judicial system, a fundamental requirement of the civil right to due process before the law and other rights relating to judicial process, is positive, resource-intensive, progressive and vague, while the social right to housing is precise, justiciable and can be a real 'legal' right.4

Another categorization, offered by Karel Vasak, is that there are three generations of human rights: first-generation civil and political rights (right to life and political participation), second-generation...
economic, social and cultural rights (right to subsistence) and third-generation solidarity rights (right to peace, right to clean environment).⁵ Out of these generations, the third generation is the most debated and lacks both legal and political recognition. This categorization is at odds with the indivisibility of rights, as it implicitly states that some rights can exist without others. Prioritization of rights for pragmatic reasons is however a widely accepted necessity. Human rights expert Philip Alston argues:

If every possible human rights element is deemed to be essential or necessary, then nothing will be treated as though it is truly important.

He and others, urge caution with prioritization of rights:

...the call for prioritizing is not to suggest that any obvious violations of rights can be ignored.

Priorities, where necessary, should adhere to core concepts (such as reasonable attempts at progressive realization) and principles (such as non-discrimination, equality and participation.

Some human rights are said to be "inalienable rights." The term inalienable rights (or unalienable rights) refer to "a set of human rights that are fundamental, are not awarded by human power, and cannot be surrendered."⁶

The UDHR enshrines universal rights that apply to all humans equally, whichever geographical location, state, race or culture they
belong to. Proponents of cultural relativism argue for acceptance of different cultures, which may have practices conflicting with human rights. For example female genital mutilation occurs in different cultures in Africa, Asia and South America. It is not mandated by any religion, but has become a tradition in many cultures. It is considered a violation of women's and girl's rights by much of the international community, and is outlawed in some countries.

For example, in 1981, the Iranian representative to the United Nations, Said Rajaie-Khorassani, articulated the position of his country regarding the Universal Declaration of Human Rights by saying that the UDHR was "a secular understanding of the Judeo-Christian tradition", which could not be implemented by Muslims without trespassing the Islamic law. The former Prime Ministers of Singapore, Lee Kuan Yew, and of Malaysia, Mahathir bin Mohamad both claimed in the 1990s that Asian values were significantly different from western values and included a sense of loyalty and foregoing personal freedoms for the sake of social stability and prosperity, and therefore authoritarian government is more appropriate in Asia than democracy.

Cultural relativism is a self-detonating position; if cultural relativism is true, then universalism must also be true. Relativistic arguments also tend to neglect the fact that modern human rights are new to all cultures, dating back no further than the UDHR in 1948. They also don't account for the fact that the UDHR was drafted by people from many different cultures and traditions, including a US Roman Catholic, a Chinese Confucian philosopher, a French Zionist
and a representative from the Arab League, amongst others, and drew upon advice from thinkers such as Mahatma Gandhi.  

Michael Ignatieff has argued that cultural relativism is almost exclusively an argument used by those who wield power in cultures which commit human rights abuses, and that those whose human rights are compromised are the powerless. This reflects the fact that the difficulty in judging universalism versus relativism lies in who is claiming to represent a particular culture.

Although the argument between universalism and relativism is far from complete, it is an academic discussion in that all international human rights instruments adhere to the principle that human rights are universally applicable. The 2005 World Summit reaffirmed the international community’s adherence to this principle:

The universal nature of human rights and freedoms is beyond question.

Companies, NGOs, political parties, informal groups, and individuals are known as non-State actors. Non-State actors can also commit human rights abuses, but are not generally subject to human rights law other than under International Humanitarian Law, which applies to individuals. Also, certain national instruments such as the Human Rights Act 1998 (UK), impose human rights obligations on certain entities which are not traditionally considered as part of government ("public authorities").
Multi-national companies play an increasingly large role in the world, and are responsible for a large number of human rights abuses.\textsuperscript{10} Although the legal and moral environment surrounding the actions of governments is reasonably well developed, that surrounding multi-national companies is both controversial and ill-defined. Multi-national companies' primary responsibility is to their shareholders, not to those affected by their actions. Such companies may be larger than the economies of some the states within which they operate, and can wield significant economic and political power. No international treaties exist to specifically cover the behavior of companies with regard to human rights, and national legislation is very variable. Jean Ziegler, Special Rapporteur of the UN Commission on Human Rights on the right to food stated in a report in 2003:

The growing power of transnational corporations and their extension of power through privatization, deregulation and the rolling back of the State also mean that it is now time to develop binding legal norms that hold corporations to human rights standards and circumscribe potential abuses of their position of power.

In August 2003 the Human Rights Commission's Sub-Commission on the Promotion and Protection of Human Rights produced draft \textit{Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights}.\textsuperscript{11} These were considered by the Human Rights Commission in 2004, but have no binding status on corporations and are not monitored.\textsuperscript{12}
Human rights violations occur when any state or non-state actor breaches any part of the UDHR treaty or other international human rights or humanitarian law. In regard to human rights violations of United Nations laws, Article 39 of the United Nations Charter designates the UN Security Council (or an appointed authority) as the only tribunal that may determine UN human rights violations.

Human rights abuses are monitored by United Nations committees, national institutions and governments and by many independent non-governmental organizations, such as Amnesty International, Human Rights Watch, World Organization Against Torture, Freedom House, International Freedom of Expression Exchange and Anti-Slavery International. These organizations collect evidence and documentation of alleged human rights abuses and apply pressure to enforce human rights laws.

A few countries do not commit significant human rights violations, according to Amnesty International. In their 2004 human rights report (covering 2003), the Netherlands, Norway, Denmark, Iceland and Costa Rica are the only (mappable) countries that did not (in their opinion) violate at least some human rights significantly.13

6-4. Three Generations of Human Rights

The division of human rights into three generations was initially proposed in 1979 by the Czech jurist Karel Vasak at the International Institute of Human Rights in Strasbourg. He used the term at least as
early as November 1977. Vasak's theories have primarily taken root in European law, as they primarily reflect European values.

His divisions follow the three watchwords of the French Revolution: *Liberty, Equality, Fraternity*. The three generations are reflected in some of the rubrics of the Charter of Fundamental Rights of the European Union.

First-generation human rights (FGHR) deal essentially with liberty and participation in political life. They are fundamentally civil and political in nature, and serve to protect the individual from excesses of the state. First-generation rights include, among other things, freedom of speech, the right to a fair trial, freedom of religion, and voting rights. They were first enshrined at the global level by the 1948 Universal Declaration of Human Rights. These rights have been stipulated in Articles 3 to 21 of the Universal Declaration, and the International Covenant on Civil and Political Rights.

When first generation human rights are limited this directly limits second generation rights. Improving first generation rights is the "causal link from first generation human rights to improved socio-economic outcomes."15

Second-generation human rights are related to equality and began to be recognized by governments after World War I. They are fundamentally social, economic, and cultural in nature. They ensure different members of the citizenry equal conditions and treatment. Secondary rights would include a right to be employed, rights to
housing and health care, as well as social security and unemployment benefits. Like first-generation rights, they were also covered by the Universal Declaration of Human Rights and are enshrined in Articles 22 to 27 of the Universal Declaration, and the International Covenant on Economic, Social, and Cultural Rights.

Third-generation human rights are those rights that go beyond the mere civil and social, as expressed in many progressive documents of international law, including the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development, and other pieces of generally aspirational "soft law." Because of the principle of sovereignty and the preponderance of would-be offender nations, these rights have been hard to enact in legally binding documents.

The term "third-generation human rights" remains largely unofficial, and thus houses an extremely broad spectrum of rights, including:

- Group and collective rights
- Right to self-determination
- Right to economic and social development
- Right to a healthy environment
- Right to natural resources
- Right to communicate
- Right to participation in cultural heritage
- Rights to intergenerational equity and sustainability
Libertarians and others to the economic right see second and third generation human rights as an attempt to cloak political goals in the language of rights, thus (a) granting certain political goals inappropriately positive connotations; (b) advancing the power of governments and NGOs while (c) diminishing the legitimate negative rights of individuals who are coerced by state power into funding or otherwise providing certain services (for example, a "right to employment" necessarily means that individuals may be forced to provide employment to others, and/or may be forced to pay additional taxes to governments to monitor and administer programs.)

It should be noted that when discussing human rights in Iran, we mainly refer to the first generation of human rights.

6-5. Human Rights Situation under Khatami

Iran is home to the earliest known charter of human rights\(^\text{16}\) — the Persian Empire established unprecedented principles of human rights in the 6th century BC, under the reign of Cyrus the Great. After his conquest of Babylon in 539 BC, the King issued the Cyrus Cylinder, discovered in 1879 and recognized by many today as the first document defining a person's human rights. The cylinder declared that citizens of the Empire would be allowed to practice their religious beliefs freely and abolished slavery. This means that all the palaces of the Kings of Persia were built by paid workers, in an era where slaves typically did such work. These two reforms were reflected in
the biblical books of Chronicles and Ezra, which state that Cyrus released the followers of Judaism from slavery and allowed them to migrate back to their land. Following Persia's defeat at the hands of Alexander the Great, the concept of human rights was abandoned.

The state of human rights in the Islamic Republic of Iran has been the subject of concern for both Iranians and the international community. Iranian human right activists, many writers, and NGOs have protested abuses, while the United Nations General Assembly and the Human Rights Commission have condemned abuses in Iran in published critiques and several resolutions.

The government of Iran is criticized for both official acts, i.e. restrictions and punishments that follow the Islamic Republic's constitutional and law; and extra-legal acts, such as the torture and killing of political prisoners, and the beatings and killings of dissidents and other civilians. Ongoing legal acts of the Islamic Republic of Iran violating international human rights norms include: harsh penalties for crimes; amputation of offenders hands and feet; punishment of "victimless crimes" such as fornication, homosexuality, apostasy, poor hijab (covering of the head for women); execution of offenders under 18 years of age; restrictions on freedom of speech, and the press, including the imprisonment of journalists; unequal treatment according to religion and gender in the Islamic Republic's constitution - especially attacks on members of the Bahá'í religion.¹⁷

Most, if not all of these issues are also violations of the Universal Declaration of Human Rights, which the Islamic Republic...
has not agreed to. However, many of the issues are also violations of the Cairo Declaration on Human Rights in Islam, which Iran adopted via the Organization of the Islamic Conference.

One defense made of the Islamic Republic's human rights record is that it is not so severe that the Iranian public is afraid to criticize its government publicly to strangers. In Syria "taxi driver[s] rarely talk politics; the Iranian[s] will talk of nothing else."\(^{18}\)

As Mahmood Monshipouri suggests, in general, two groups have main subject of human rights discussion in Iran: women and minorities. Among the religious minorities, the Baha’is have been and remain targets of blatant discrimination. The legal status of women, which was lowered after the change in Iran’s criminal code, has been the subject of intense discussion in post-revolutionary era.\(^{19}\)

Nonetheless, following the rise of the reform movement within Iran and the election of moderate Iranian president Mohammad Khatami in 1997 numerous moves were made to modify the Iranian civil and penal codes in order to improve the human rights situation. The predominantly reformist parliament drafted several bills allowing increased freedom of speech, gender equality, and the banning of torture. These were all dismissed or significantly watered down by the Guardian Council and leading conservative figures in the Iranian government at the time.

Iranian officials have not always agreed on the state of human rights in Iran. In April 2004, reformist president Mohammad Khatami
stated "we certainly have political prisoners [in Iran] and ... people who are in prison for their ideas." Two days later, however, he was contradicted by Judiciary chief Ayatollah Mahmoud Hashemi Shahroudi, saying "we have no political prisoners in Iran" because Iranian law does not mention such offenses, ... "The world may consider certain cases, by their nature, political crimes, but because we do not have a law in this regard, these are considered ordinary offenses."²⁰

The Iranian fundamental law or constitution calls for

- equal rights among races, ethnic groups (article 19).

It calls for

- gender equality (article 20), and
- protection of the rights of women (article 21),
- freedom of expression (article 23), freedom of press and communication (article 24) and freedom of association (article 27).
- Religious minorities "are free to perform their religious rites and ceremonies."

However, the rights of women, of expression, of communication and association - are followed by modifiers such as "within the limits of the law", "within the precepts of Islam", "unless they attack the principles of Islam", "unless the Law states otherwise", "as long as it does not interfere with the precepts of Islam."
The Iranian penal code distinguishes two types of punishments: *Hudud* (fixed punishment) and the *Qisas* (retribution) or *Diya* (Blood money or Talion Law). Punishments falling within the category of Hududs are applied to people committing offenses against the State, such as adultery, alcohol consumption, burglary or petty theft, rebellions against Islamic authority, apostasy and homosexual intercourse (considered contrary to the spirit of Islam). Punishments include death by hanging, stoning or decapitation, amputation or flagellation (punishments are usually carried out in public). Victims of private crimes, such as murder or rape, can exercise a right to retribution (Qissas) or decide to accept "blood money" (Diyah or Talion Law).\(^{21}\)

The qualifications of "free speech" for the media in the constitution call for law to specify controls on the press. The 1985 press law does this by prohibiting "discourse harmful to the principles of Islam" and "public interest, which according to Human Rights Watch provides "officials with ample opportunity to censor, restrict, and find offense."\(^{22}\) According to ‘Reporters Without Borders’ Iran continues to be the largest prison for the press in the Middle East, and in the organization’s annual estimation on freedom of the press in the world in 2007 Iran ranks as number 166 out of 169 total countries. In August 2007 the organization tells of 11 imprisoned journalists of whom at least 2 are sentenced to death and are awaiting their penalties.\(^{23}\)

In a 2008 report, the organization Human Rights Watch complained that "broadly worded `security laws`" in Iran are used to
"to arbitrarily suppress and punish individuals for peaceful political expression, association, and assembly, in breach of international human rights treaties to which Iran is party." For example, "connections to foreign institutions, persons, or sources of funding" are enough to bring criminal charges such as "undermining national security" against individuals.²⁴

An example of the sort of charges made against and severe penalties leveled on political demonstrators was the death sentence for "propaganda against the Islamic Republic System," given to Ahmad Batebi, a demonstrator in the July 1999 Student demonstrations in Iran. A photograph of Batebi's holding a bloody shirt aloof was printed on the cover of *The Economist* magazine. He was sentenced to death although this was later reduced to 15, and then ten years imprisonment.²⁵

According to the Reporters Without Borders Press Freedom Index for 2007, only three other countries - Eritrea, North Korea and Turkmenistan - have more restrictions on news media freedom than Iran.²⁶ Its 2007 report on Iran says "Dozens of journalists were arrested in 2006 for criticising the authorities and some were imprisoned in secret in difficult conditions without access to a lawyer."

The Internet has grown faster in Iran than any other Middle Eastern country since 2000 but the regime has censored thousands of websites it considers "non-Islamic" and harassed and imprisoned online journalists. 20 bloggers were imprisoned in 2004, but as of the end of 2006 none were in prison. Reporters without Borders also
believes that it is the Iranian "government’s desire to rid the Iranian Internet of all independent information concerning the political opposition, the women’s movement and human rights.” Where the government cannot legally stop sites it uses advanced blocking software to prevent access to them.27

Ldan Boroumand writes:

For many scholars and journalists, Khatami is a moderate and enlightened cleric who wishes to liberalize the Islamic regime from within. He enjoys the support of the masses, but is challenged by the conservatives, who are violent, corrupt, and unpopular. Whereas Khatami speaks of "democracy," "civil society," and the "rule of law," his conservative colleagues oppose the newly acquired freedom of speech, attack newspapers, and assassinate dissidents in order to undermine his reforms.28

The simultaneous freedom and harassment that characterizes the press in Iran could have been symptomatic of the overall struggle between reformists and conservatives. The former’s efforts to promote press freedom would be constantly thwarted by the conservatives who would use the power of the judicial system to achieve their political ends.

Not every banned newspaper and magazine got its permit renewed; some publications disappeared for good. The dynamic of banning and authorizing newspapers seemed to serve a dual need: that of altering the image of civil society mirrored by the press so that
it conformed to the orthodoxy, and that of correcting the reflection of the regime's own image in the public opinion.29

The monthly Jame'eh-Salem was banned for publishing debates and commentaries by some youth on the notion of civil society. The court targets and condemns the society's effort to define itself, thereby excluding the state. Moreover, Jame'eh-Salem was condemned for having published an Italian journalist's interview with Ayatollah Khomeini that had taken place in the early days of the revolution. The court judged that the publication of the interview was a blow to the memory of the Imam. Here, the historical truth itself is considered to be an offense. The banning of the newspaper signals the state's attempt to control the collective memory by perpetuating a state of amnesia demarcated by the needs of the orthodoxy.

The director of Rah-e Now, Akbar Ganji, chose to suspend the publication of his monthly in order to avoid the confiscation of its license by the Ministry of Culture and Islamic Guidance. According to Ganji, the authorities disapproved of the publication of theoretical articles. Thus, the authorities systematically hampered the intellectual effort which aimed at finding a way out of the structural and ideological impasse of the Islamic Republic.
Notes and References:


6. Ibid., p. 39.


8. Gready, op. cit, p. 34.


“Eritrea ranked last for first time while G8 members, except Russia, recover lost ground,” http://www.rsf.org/article.php3?id_article=24025.


Ibid.,

Ibid.