The Islamic Revolution (1979) was a unique revolution in the history of Islam which was erupted in the name of religion. The monarchy’s demise, and the revolution’s rapid metamorphosis into the Islamic Republic has manifested the ulema’s manoeuvring capability. Islam became the determinant object for the system as a whole. This revolution has changed the structural nature and functional scope of the three branches of the government, namely legislature, executive and judiciary. The 1979 revolution’s unique feature has been seen in form of the creation of the post of the Velayat-e Faqih.¹

The term Velayat-e Faqih is coined by Khomeini. The theory of Velayat-e Faqih has been derived from the Imamate system, as Imam had authority and power to rule over society and became only legitimate ruler, in the same way the Velayat-e Faqih has all these powers. This old dormant theory is not innovation at theoretical and conceptual level rather than replica of the Imamate system where the Faqih is all in all in the governance of the country and only this post is the source of legitimacy for the system as whole because in the absence of the Twelfth Imam, only the Faqih has right to rule over society and legitimate ruler. On this conviction Khomeini developed the theory of the Velayat-e Faqih and became first Velayat-e Faqih of the Islamic Republic of Iran.

The structural changes were brought in the three branches of the government in the post-Revolutionary Iran. change in the system as a whole is the repercussion of the Islamic Revolution. The president of the Islamic Republic of Iran is the head of the executive, is directly elected by the people, and is next to the leader (spiritual leader). Any problem is created within or among these branches is sort out by the Velayat-e Faqih, who is the leader of the nation. The president cannot appoint his Council of Ministers at his own will, but he has to propose the name of the Council of Ministers before the Majlis, and the Majlis has right to approve or disapprove his proposed name of the Council of Ministers.

¹ The term Velayat-e Faqih is a Persian term which means the Guardianship of the jurisprudent.
There is an independent constitutional body, the Council of Guardians, which evaluates and examines the legislation of the Majlis that a bill is passed in the Majlis is according to Sharia or not. This body’s function is not only confined to legislation but interprets the constitution also whenever is needed. The permanent nature of this body has reflected its significance in the Iranian political system.

“And you God is One God. There is no god but He.” 2 “He is Allah, The One; Allah, the Eternal, Absolute.” 3 “All authority belongs to God alone.” 4 The whole Islamic political philosophy is rotating around the notion that Allah (God) is sovereign, all in all, and only He is the law-giver. He is the real sovereign and all others are His subjects. He is the law-giver, and absolute legislation authority vests in Him. Even no one in this world, is parallel to Him. The Islamic political theory is based on this notion, and all theoretical and conceptual sketches of the Islamic State are drawn on the basic faith of Islam.

Islamic government is neither autocratic nor absolute but constitutional. Although it is not constitutional in the current sense of the word i.e., based on the approval of laws in accordance with the opinion of the majority. Islamic government is constitutional in this sense that the rulers are subject to a certain set of conditions in governing and administering the country, conditions that are set forth in the Quran and the Sunna of the Most Noble Messenger. It is the laws and ordinances of Islam comprising this set of conditions that must be observed and practiced. That is why the Islamic government is defined as the rule of divine-law over men. 5

The Islamic government is nothing but the rule of God, and the divine-law is the source of all laws, and on this God-gifted law, the foundation of the Islamic State is based.

The twenty five hundred years old monarchical system of government demised in Feb 1979 after a glorious Revolution. Khomeini dismissed monarchy and hereditary forms of government as being unIslamic. This Revolution is watershed in Iranian history. The 1979 Revolution is a unique and watershed event in the long history of Iran which culminated into the establishment of the Islamic Republic. The 1979 Revolution’s rapid metamorphosis into

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2 Al-Quran , 2:163.
3 Ibid. 112:1-2.
4 Ibid. 3:154.
an Islamic Revolution, is a product of the ulama's political
manoeuvreness and shrewdness. A close alliance between religion
and State was made an attempt to legitimise political power by a
religious ideology. The ascendancy of clergymen to power, has led
an impressive ideological Islamisation of Iran. The whole Iranian
political system has come under the garb of Islamic belief,
faiths, norms, values and precepts. Its sway has not spared a
single place of Iranian political system where the political
scientists could say that area or field has been spared or
remained without influence of Islam. After Revolution, Iran's
political culture changed in two ways, first, existing
monarchical system and its pervasive effect demised and eroded
during Revolution; and second, at the same time, this Revolution
gave birth to the Islamic government that was envisioned by the
Iranians for long time.

The Revolution 1979 has altered and changed the structural
nature and functional scope of the three branches of the
government. This clear and limpid transition has marked the
beginning of a new annals in the history of Iran. The unique and
the most important feature of post-Revolutionary Iran is the
institutionalisation of the post of the Velayat-e Faqih. This
concept of the Velayat-e Faqih, legitimises the Faqih's role as
the guardian of the people. The three branches of the government,
executive, legislative and judiciary are under the influence of
Islam.

**Genesis and development of the Velayat-e-Faqih**

The Shii political theory is based on the doctrine of
Imamate. The first person who gave "a theological exposition of
the doctrine of the Imamate is said to have been Ali Ibn
Mithan." Ali Ibn Mithan said that on "the Prophet Mohammad’s
death Ali was *afdal an-nas* (the most excellent of man) who was
designated by Mohammad." It is faith of Shia that the Prophet
Mohammad designated his successor to Ali to lead the community.
"Prophet Mohammad was the first person in the history of Islam

6 The term "Shi" will be used to denote the *Ihna Ashari "Twelver" or Jafari branch of Shiism* unless otherwise noted.
who undertook the implementation of laws, the establishment of ordinances, and administration of the society, thereby bringing into existence the Islamic State." 

Thus, the Prophet Mohammad is the founder of the Islamic State in the history of Islam, and who also designated his successor to maintain its continuity.

Those who were busy in theorising the concept of Imamate doctrine on the basis of the Prophet Mohammad’s designating successor that their basic aim and principle seems to have been that “authority must come from above and cannot be conferred by the vote or acclamation of ordinary people.” 

This is the cornerstone of the Imamate system that each and every Imam is appointed by their predecessors, those have had divine authority to do it. It is crystal-clear that authority can only be conferred by someone who already has authority, so, the method of appointment of an Imam must be designated by his predecessor as the Prophet Mohammad had designated Ali. So in Shia, Imam has prerogative, discretionary and legitimate right to appoint his successor and no one has right to say anything on the issue of designating successor. The people have nothing a word to say and will have to obey without any question because they are only follower of the line of Imam. Here is basic and moot question, why the people should obey their Imam appointed by his predecessor without questioning? These Imams legitimise their succession by connecting themselves with the Prophet Mohammad and they believe that they are the descendant of the Prophet.

It is the Shia’s belief that the only Prophet’s cousin and son-in-law, Ali ibn Abu Taleb, and his direct descendant Shiite Imams have had the divine authority and ability and capacity to understand Islamic law and implement it. According to Shia, Ali is the first Imam, who was designated by the Prophet. The Prophet during his life-time ruled over society, he had absolute authority over society in all matters then he designated his successor to Ali, Ali had also the same authority like the Prophet, to tackle and handle the affairs of society in all matters. Such as Imam should have absolute authority like Ali.

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10 Watt. n.7, P.25.
Imam ought to be a divinely inspired and guided man and has right to speak last word on any disputed question of God's law.

When we see the long history of Shii Imamate system, we find that except first Imam Ali Abu Taleb, "no Imam ever held the reins of government, the Imamate provided an alternative, heaven-inspired government for Shia."\(^{11}\)

The Eleventh Imam of the series, Hasan Al-Askari died in January 874. One or two year afterward his son, Abu al Qasim Mohammad mysteriously disappeared, the date is often used as 878, but the whole matter is very obscured and even the Imami sources are not unanimous on this issue. It is a matter of faith among Shias that Imam Hasan Al-Askari's son, Mohammad is mysteriously disappeared and who is the Twelfth Imam of the Shia.

According to Imami theory, the disappearance was a voluntary going into occultation or concealment and it also further implies that in this state, the Twelfth Imam was not subject to mortality but who would return as the Mehdi at an appropriate time. It is the Shia's faith that Mohammad went into occultation but he is still mysteriously present as Imam-al Zaman (the Imam of the day, often described as the Hidden Imam) and he is fulfilling and performing the requirement for the permanent presence of the Imam and at the appointed time, he will return as the Mehdi to bring salvation to the earth.

It is also common belief among the Shia that the Twelfth Imam was represented on earth by a Wakil (agent), who had been contacting to the Imam. In fact, there was a succession of four agents, in which fourth, the last agent died in 940 and the time up to that date is known as the period of the Lesser Occultation (al-Ghaibah al-Sughra). After the death of the fourth Wakil in 940, there was no any Wakil (agent) who could contact with the Twelfth Imam, this period is called the Greater Occultation (al-Ghaibah al-Kubra), and still it continues. After the occultation of the Twelfth Imam, Imam Abu al-Qasim Mohammad ibn Hasan in the

\[^{11}\] Homa Omid. _Islam and the Post-Revolutionary State in Iran_ (London: Macmillan Press, 1994), P.05
ninth century, the Shii ulema gradually acquired the mantle of the Prophet.\textsuperscript{12}

According to Shiite, theoretically all temporal and spiritual authority is vested in the Twelfth Imam who is into occultation, since he is into occultation, the exercise of that authority is not possible. Such as, the Shia community is left leaderless, so, leader has authority to govern society such as Imam governed society before going into occultation. To exercise these functions, the ulema would act collectively as al-naib ‘al Imam (vice-regent) of the Hidden Imam. So, if they are al-naib ‘al Imam (vice-regent), they have an obligation and duty to exercise all the Hidden Imam’s powers and functions which include ruling or governing the community. Only they are the rightful successor of the Imam to lead the community which has been left the leaderless.

To lead the leaderless Shia community, Ayatollah Khomeini’s doctrine of Velayat-e Faqih is not an innovation in the Shia political theory rather it is a revival of an old dormant doctrine. His notion of the Velayat-e-Faqih is based on the Imamate doctrine, and even we can say it is a replica of the Imamate system.

Khomeini has defined Velaya (guardianship) in limpid way, Velaya is either existential (takwini) or relative (itibari). The erstwhile is a spiritual pre-eminence exclusive to the Prophet and the Imams; the latter is the social and political duty of the Faqih to “administer and rule the state and to implement the laws of the sacred paths.”\textsuperscript{13} Only Faqih has the right to rule and administer the society because he has the legitimate right in this regard and this legitimate right has been derived from the sacred-law.

This Qur’aic verse clearly manifests the rank and status of the Prophet Mohammad. “The Prophet has a greater claim on the


\textsuperscript{13} Two types of velaya: the first, takwini (existential), and the second, tashri’i (Legislative) or shari (Canonical); the first is the exclusive to the Prophet and the Imams and the second is the duty of the Faqih.
believers than they have on themselves." The position, status and rank of the Prophet is higher than any other in this world, and even no one is parallel to him in this world. His spiritual status is the higher to the rest of the human being in this world. The Faqih follows the sayings and doings of the Prophet and implement them in society and rules over society by implementing these Sunna and its Quranic precepts.

The term Velayat-e Faqih means "authority" or "governance" of the jurisprudence over the affairs of the Muslim community. According to Shia tradition, a Velayat (guardianship) has been derived from the universal authority of the Twelve Imams "descendants of the Prophet through his daughter Fatima and his son-in-law Ali, each designated by his predecessor, all immaculate and infallible, who possess a universal authority... in the things of religion and of the world." Each and every Imam is designated by his predecessor who has divine-authority, so, successor has also the divine authority.

According to Shii fiqh, there are four types of the functions of the Faqih (jurisprudent) who exercises over the community. First, guardianship over persons and properties of those who might be victimised and maltreated, these embody orphans, foundlings, widows and persons of restricted capacities in any way and any form. Traditionally, the Velayat assigns powers to the jurisprudent to overrule, dismiss and replace a incompetent, dishonest and corrupt executor or ruler without any delay. Second, the Faqih's function is related to religious matters. The Faqih has to exercise guardianship over the properties and activities upon which the religious life of the community depends. For instance, the Faqih administers the pious cheritable, endowments, mosques, madarssa and shrines. It falls under the authority of the Faqih to supervise religious educational institutions, to arbitrate and decide disputes within

14 Al- Qur'an, 33:6
15 "Jurisprudent (S)" will be used to translate Faqih (pl. Fuqaha). To avoid any terminological confusion it is to be noted here in order. Religious leaders in Shism consist of the alim (pl. Ulema), "scholar," who is learned in religious science; The Faqih. "Jurisprudent" who is expert in Fiq (Islamic jurisprudence); and the mujtahid who is authorised (possesses the ijaza) to exercise the ijtihad. These distinctions should not be confused with the hierarchy of mujtahids based on erudition and size of following: mujtahid-Islam, hujjat al-Islam wa al-muslimin, Ayatollah fi al-alam, and Ayatollah al-oema fi al-alam. 
the community and to serve as judges and delivers verdict in properly constituted Sharia courts. These verdicts and judgments are binding to the community as a whole. Third, jurisprudent may exercise a general guardianship over the weal of the Muslim community, covering the responsibility of serving as a social force, aimed at carrying out and implementing the Quranic injunction to “command the good and forbid the reprehensible.”

This type of Velayat (governance) must indulge in such type of activities to compel the authorities to release scarce good and commodities, provide social welfare facilities and put petition against the authorities and administration on behalf of the victim of oppression and injustice. Guardianship of Faqih over the first three is unanimous among the Shia ulema, but the fourth, is controversial and has lack of unanimity over this guardianship. The unanimity does not take place on the fourth claim that has been put forward by some Shia scholars, namely jurisprudents enjoy a Velayat empowering them to exercise direct political authority to conduct the day-to-day operations of the government, particularly, in the times of danger or impeding chaos on behalf of the Hidden Imam. There has been no disagreement over the rights of the Faqih to indulge and engage in political activities aimed at redressing injustices done by the ruler or protecting and preventing from declining the religious and moral standards of Islam. Nonetheless, the fourth claim that has been put forward by some Shii theoreticians extends beyond the actual administration of government and brings political processes under institutional control, powers which belong to the universal authority of the Imams which is coming down from the Prophet and his designated successor, Ali.

At the outset, there was no question of jurisprudent exercising Velayat except direct appointment of the first Imam, Ali, who held caliphal power. Universal authority was vested in him with his appointment as Caliph. There was no such question during the lifetimes of the remaining the Imams except Husein to

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17 Al-Qur'an, 9:112.
19 Imam Khomeini has vehemently supported this idea of political Velayat in his book Hokumat-e Islami that Velayat-e Faqih must use the universal authority in the absence of the Twelfth Imam.
whom Shia claim universal political authority, only Husein sought political power. He fought a historic battle at Karbala with Yazid to hold and retain his political power. In this historic battle, he lost himself and entire his family members and got martyr in the history of Islam. This battle is historic in itself because in spite of losing his all family members, did not bow and surrender his political authority to Yazid. That is why, the later Imams sought political authority to redress injustice and oppression and run society. Al-Murtada’s treaties “concerning the tenure of office on behalf of the oppressor and nature of the doctrine about its propriety or impropriety assumes that the Twelfth Imam is the only rightful ruler of the Muslim community.”20 The “Twelve” Imam is the only rightful ruler of the Muslim community.

The traditional view legitimised participation in governmental service under very restricted circumstances, in which the traditional jurisprudent could intervene in political matter only to redress injustice and to guard and secure Islamic moral standards. But Khomeini’s thesis of Velayat-e Faqih differs from the traditional point of view. The strongest advocate of marjaiyat, the doctrine which allows that a believer must follow (taqlid to) a qualified legal scholar (mujtahid) in matter of religious practices if believer himself is not a mujtahid, he could be denied political role. Shaikh Murtada Ansari was a mujtahid during his lifetimes, advocated that the political activity of jurispondents should be limited and they should intervene in political matters only to secure justice and Islamic morality, except this, should not be intervened by jurisprudent, his view was also supported by Ayatollah Mohammad Hasan Shirazi, who invoked fatwa (religious decree) against the British Tobacco Concession in Iran in 1892, his fatwa was an intervention to secure justice for the peasants of Iran and prevented the expansion of Kafir21 influence in the Muslim community. Ayatollah Mohammad Naini also belonged from same school of thought. He was a mujtahid as well as leading theoretician of the Constitutionalist Revolution. Naini advocates “it is true that

21 According to Islamic tenets, those who do not belief in Islam they are called Kafir.
the Ulema’s responsibility as General Agents of the Imam in all other offices, i.e. rulership is not unquestionably recognised.” However, his concept of the political role of jurisprudent is more than simply intervention for securing justice and protecting Islamic norms and values.

Traditionally, Velayat-e Faqih in political matters is limited. The Shii authorities had claimed political authority for jurisprudents only in the 18th century. The political Velayat of jurisprudence has been taken into account only for occasional intervention into political matters to redress injustice and safeguard religion and Muslim society. But Khomeini’s notion of the Velayat-e Faqih is distinct from theirs because he blends political and universal authority in one and makes the Velayat-e Faqih a spiritual and political leader like Church and State as was blended in medieval period and places to the Velayat-e Faqih in licensing position to rule over society at the place of Imam with his full authorities during occultation because society is a leaderless society, so, occupying the place of the Imam during occultation is not altogether outside the Shii tradition but a rightful act. Imam Khomeini has built the edifice of the notion of his Islamic government at the Imamate system is very apparent without any ambiguity. Khomeini’s theory of the Velayat-e Faqih is a synthesis of spiritual and temporal affairs.

Khomeini’s notion of the Velayat-e-Faqih.

The concept of the Velayat-e Faqih of Khomeini is incorporated in the constitution of the Islamic Republic of Iran and it has locus standi and central place in the Iranian political system, and has became so important in the Iranian political system that all powers are derived from it. This politico-religious post is the source of legitimisation of all the government acts and the government’s day-to-day business. The Iranian political system’s focal point is the Velayat-e-Faqih around which the whole system is rotating and deriving its legitimacy.

23 Article 5
Khomeini’s exposition of his theory of Velayat-e Faqih is very clear that “the Faqih has authority over the ruler.” The Faqih is the actual ruler of society because he has universal authority. If the ruler follows Islam and its rules and regulations “he (ruler) must submit to the Faqih, asking him regarding the laws and ordinances of Islam in order to implement them.” Thus, the true rulers are the Fuqaha themselves, and rulership ought officially to be theirs unquestionably.

The Faqih (ruler) must possess excellence in moral and belief, and he must be just and untainted by major sin. God assigns him (ruler) the power to administer the affairs of His creature must not be a sinner. God says in this support “My covenants does not embrace the wrongdoer.” His covenant the Prophet Mohammad and Ali were covenants, and were free from sins and they were the rulers of the Muslim community, in the same way, the Fuqaha are the covenant and have the right and authority to rule over the Muslim community.

It is imperative for the Fuqaha (rulers), they must have two qualities: Knowledge of the provisions and ordinances of Islam; and justice excellence in belief and morals. These two qualities of the knowledge of the law and justice are present in the Fuqaha of present day.

If a individual having these two qualities and establishes a government, “he will have the same authority as the Most Noble Messenger in the administration of society, and it will be the duty of the people to obey him.”

When we talk here about the Prophet Mohammad’s status, rank and position, and authority over the Muslim community, we must preserve in our mind that the Prophet’s position, status and his spiritual position is higher than any other but in the matter of administration, the Fuqaha and others have the same authority to

24 Khomeini, n.5. P.52
25 Ibid. P.52
26 Al-Quran 2:124.
27 Khomeini, n.5. P.55
rule over society as Prophet Mohammad had. "The Prophet has higher claims on the believers than their own selves." 28

The virtues of the Most Noble Messenger were greater than those of the rest of mankind, and after him, the Commanders of the Faithful were the most virtuous persons in the world. But superiority in respect of spiritual virtues does not confer increase in governmental powers. 29

God has granted upon government in the present age, the same powers and authority that were held by the Prophet Mohammad and the Imams in respect of equipping and mobilising armies, appointing governors and levying taxes and expending them for the weal of the Muslims. 30

There is no difference in exercising the governmental powers between the Prophet and the Fuqaha, here difference lies between them only in the spiritual status where the Prophet has the greater virtues than others.

Khomeini's theory of the Velayat-e Faqih is based on the notion of the Occultation of the Twelfth Imam that "the just Faqih has the same authority and power that the Prophet and the Imams had," 31 barring that his authority does not extend to other Faqih and a "Faqih does not have authority over all other Fuqaha of his own time, being able to appoint or dismiss them." 32 However, Khomeini himself denies that "the status (manzleh) of the Faqih in identical to that of the Imams and the Prophet " 33 and asserts that "the Velayat (governance) of the Faqih is a rational and extrinsic matter," 34 and it is only a type of appointment like the appointment of a guardian over a minor. In this way, there is difference between the Prophet and the Imams on the one hand, and the just Faqih on the other, because we do not talk here about the status but rather of function. Here authority means government, the administration of the country and this implementation of the sacred laws of the Sharia. The main focus and the emphasis of Khomeini is that the Faqih enjoys the extrinsic position that is social and political powers of the Imam.

28 Al-Quran 33:6
29 Khomeini, n. 5. P. 55
30 Ibid. P. 55
31 Ibid. P. 55
32 Ibid. P. 57
33 Ibid. P. 55
34 Ibid. P. 56
The authority and power that "the Prophet and the Imam had in establishing a government, executing laws and administering affairs exist also for the Faqih."\(^{35}\) It is the duty of the Fuqaha to set up a government in order to implement the laws and protect its territory collectively or individually. If this task falls upon a single Faqih, he must fulfil his duty, otherwise, it is a duty that falls upon all the Fuqaha as a whole. "Even if, it is not possible to fulfil the task, the authority vested in the Fuqaha is not voided because it has been vested in them by God."\(^{36}\) The Fuqaha are the real ruler of the society, and society must be governed by them.

The Prophet and the Imams had the governmental authority, its does not mean that they have no spiritual status.

Government and authority belong to the Imam, its does not mean that the Imam has not spiritual status. Indeed the Imam has spiritual status that is unconnected with his function as a ruler. The spiritual status of the Imam is the universal divine vice-regency that is now and then stated by the Imams. It is vice-regency relating to the whole of the creation, by virtue of which, all the atoms in the universal humble themselves before the holder of authority.\(^{37}\)

Imam's status and rank is not like the status and rank of the Prophet but his governmental authority is the same as the Prophet had.

"It is the duty of the Imams and the just Fuqaha to exercise governmental institutions to execute divine law, establish the just Islamic order and serve mankind... The governance of the Faqih is nothing but the performance of a duty."\(^{38}\) It means that the involvement of the Faqih in the day-to-day administration is nothing, but the performance of a duty that has been assigned by the God. The Fuqaha are bound by God to perform their duty whatever has been assigned by God and they can not run away from performing these duties, their duty is to govern society and serve mankind. For running the administration and serving the mankind, the ruler "must know the law and be just,"\(^{39}\) these two qualities are prerequisite for the governance of the Faqih.

\(^{35}\) Ibid. P. 57  
\(^{36}\) Ibid. P. 57  
\(^{37}\) Ibid. P. 57  
\(^{38}\) Ibid. P. 60  
\(^{39}\) Ibid. P. 62
Commander of the Faithful put two necessary qualities for the ruler, and the whole discourse revolves around these two points, knowledge and justice. "He should not be benighted and unaware of the law lest in his ignorance he may mislead the people," here emphasis is upon the knowledge, but in the remaining sentence the emphasis is upon justice, in its true sense.

The Mujtahids and the Fuqaha “are the successors of the Prophet, disseminating the divine ordinances and instructing men in the sciences of Islam. The Prophet prayed before God and said “O God! Have mercy on my successors." The Fuqaha’s principal duty is to implement the divine ordinances upon which Islam is based, so, their first and foremost duty is to implement the divine law. The successors of the Prophet are “the Fuqaha of Islam. Dissemination of the ordinances of Islam, as well as the teaching and instruction of the people, is the duty of the Fuqaha who are just.” The governance of the Fuqaha means that all acts of the government will be done in the name of the Fuqaha, and the Fuqaha’s action will legitimise the government’s function. The Fuqaha are the successor of the Prophet, which means to succeed to all the functions of prophethood. The Fuqaha are the sole guardian and the successor of the Prophet to protect the Muslim community from inflicting injustice and oppression.

It is the saying of the Imam that “those believers, who are the Fuqaha, are the fortresses of the Islam," it actually refers to the Fuqaha, the duty of being guardian of the faith and beliefs, ordinances, and institutions of Islam. The Imam’s statement sheds light on the meaning that the Fuqaha are the fortress of Islam is that they have duty and are bound by duty to protect Islam and they must perform their duty whenever is necessary to fulfill that duty. This is one of their indispensable duty, and moreover, an absolute duty, not a conditional one.

40 Ibid. P. 62-63
41 Ibid. P. 68
42 Ibid. P. 68
43 Ibid. P. 71
Islam came into being to bring order in society, leadership and government are for the sake of ordering the affairs of society. It is the duty of the Faqih to establish order in society since they are the protector and the fortresses of Islam.

The Fuqaha are the trustees of the Prophet, so long as they do not indulge themselves in the illicit desires, pleasures and wealth of this world. The just Fuqaha, who are the successors of the Prophet and do not have any worldly pleasure and desire. They do not indulge themselves into these worldly desire and pleasure since they are the fortresses of Islam who protect and preserve standard of the Islamic values and norms. Being successor of the Prophet, they carry out responsibility of the Muslim society on their shoulder.

If a Faqih has aim to accumulate the worldly wealth and pleasure, he is no longer just and can not be trustee of the Prophet and the executor of the ordinances of Islam. It is only the just Fuqaha who can correctly implement the ordinances of Islam and establish just society in which the people will lead their life in accordance with Islamic values and norms.

The meaning of the expression. "the Fuqaha are the trustees of the Prophet" is not that the Fuqaha are trustee only in respect of pronouncing juridical opinion but they also take into account and solve the various problems in the light of Islamic precepts which have been arisen in society. The most important function of the Prophet was the establishment of a just social order through implementation of laws and ordinances. This notion is limpidly manifested in the verse, "verily, we have sent our Messengers with clear signs, and sent down with them the Book and the Balance in order that men might live in equity." It is obvious from aforementioned that the main purpose for sending down the Prophet was to ensure men's life in order on the basis of just social relations, and true humanity may be established among men. It may be possible only by establishing just government and implementing divine laws, whether it was

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44 The expression translated here as "leadership" is imamate itibari. The "governance" (I'layat) of the Faqih is itibari (extrinsic) to his person, he exercises it only by virtue of the acquired attribute of just Faqih.
45 Khomeini, n.5, P.76
46 Al-Quran, 57:25
accomplished by the Prophet himself, as was the case with the Most Noble Messenger or by the followers who came after him.

God appointed the Most Noble Messenger the head of the Muslim community and instructed them to obey him, "obey God and obey the Messenger and the holders of authority from among you." Obey the Messenger means, obey the religious matters that had been revealed by the Prophet. Here obedience to God is the conformity to the ordinances of religion, all activities are conducted in the conformity to divine ordinances, whether they are rituals or not, are a form of obedience to God. Obeying the Most Noble Messenger is in certain sense, to obey God, we obey the Prophet because God has commanded us to do so. Those who have authority in accordance with religion, God has commanded us to obey them because they are the preserver and protector of the Muslim community.

Just as the Prophet was entrusted to implement divine laws and establish institutions of Islam and God set him up over the Muslims as their leader and ruler, making obedience to him obligatory, so, too, "the just Fuqaha are leader and ruler and they must implement divine laws and establish the institutions of Islam."48

"The Islamic government is a government of law... the Fuqaha must administer its function. The Fuqaha supervise all executive and administrative affairs of the country along with all planning." When a government of law is established, all will live without fear, and no ruler will have the right to take any step which is contrary to the provisions and laws of the immaculate.

Imam Reza said, "an honest and trustworthy Imam is sine qua non for the community in order to preserve it from degrading, and he also reasserted that the Fuqaha are the trustees of the Prophet."50 Thus, the Fuqaha must be the leader of the people in

47. Al-Quran, 4:59
48. Khomeini, n.5. P.80
49. Ibid. P. 80
50. Ibid. P. 82
order to prevent Islam from declining. It is the duty of the
*Fuqaha* to prevent Islam from its declining.

Taking into account the fact that the *Fuqaha* do not have the
status and rank of Prophethood but they must be the legatees or
successors of the Prophet, the legatees of the Prophet is sine
qua non for them, otherwise, who will govern society, if they
will not rule over society then injustice and oppression will
exit. The expression “legatee of a Prophet” is generally assumed
to refer to his immediate successors. The concept legatee of a
Prophet a broad one, however, that includes the *Fuqaha.*
According to this concept, the immediate legatee of the Prophet
was, of course the Commander of the Faithful, who was followed by
the other *Imams*, and the affairs of the Muslims were entrusted to
them, but no one should think that the function of government is
a form of Privilege for the *Imams.* But it is a grave
responsibility. Governmental functions are entrusted to them
because only they are the best able to set up a just government
and implement social justice among the people. Spiritualism in
the *Imams* is different matter. It is not that the holding of
governmental authority bestow spiritual rank and privilege on a
man, paradoxically, “spiritual status and position qualify a man
for the assumption of government and social accountability.”

Imam Jafar Sadiq stated “avoid from judging, because
judging is reserved for an *Imam* who has knowledge of the law and
legal procedure and who behaves just to all Muslims; it is
reserved for only a Prophet or the legatee of a Prophet.”
Thus, the *Fuqaha* are the legatees of the Prophet and all tasks
entrusted to the *Imams* are also incumbent upon the *Fuqaha* and
those task had been performed by the Prophet, they also had been
performed by the Commander of the Faithfull.

A person who desires to sit as a judge, first of all, he must
be an *Imam.* *Imam* means “leader”, “guide”. Those who wants to sit
as a judge, they must possess three qualifications being a
leader, being knowledgeable and just. The tradition confirms it

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51 Ibid. P. 86  
52 Imam Jafar Sadiq: sixth of the Twelve *Imams*. He is referred because played an important role in developing the religious sciences.  
53 Khomcini, n.5, P.86
that these three qualifications can be found only in a Prophet or the trustee of the Prophet.

Only the just Faqih has right to sit as a judge, not any Faqih. The term Faqih refers to one who is learned not only in the laws and judicial procedure of Islam, but also in the doctrines, institutions and ethics of the faith. Thus, the Faqih is a religious expert. "The Faqih is just." His third qualification is that, he should be an Imam in the sense of leader. The just Faqih occupies the position of leadership and guidance in capacity as judge in accordance with the appointment by the Imam. These three specific qualifications are not found in anyone except a Prophet or the legatee of a Prophet.

Since the Fuqaha are not the Prophet they must be the legatees or the successors of the Prophet ... the Faqih is the legatee of the Most Noble Messenger, over and above, during the Occultation of the Imam, he is the leader of the Muslims and the Chief of the community. Only he may act as judge and no one else has any right to occupy the position of judgeship.

The doctrine of "Proof of God" means that "like the Prophet was the proof and authoritative guide of all the people, in the same way God had appointed him to guide people in all matters, so, the Fuqaha are also accountable for all affairs and are the authoritative guides of the people." The Fuqaha are the legatees of the Prophet, in the same way they are also the "proof of God." The person who is a "proof of God" to "whom God has assigned to conduct affairs; all his deeds, actions and sayings constitute a proof for the Muslims." Without being the Faqih, a person cannot claim for the universal authority, is rest only with the Fuqaha. The Fuqaha of Islam are proofs to the people. "Just as the Most Noble Messenger was the proof of God; the conduct of all affairs of society being entrusted to him ... so, the Fuqaha are also the proof of the Imam to the people."

"O you who believe, obey God and obey the Messenger and the holders of authority among you." The verse, "O you who believe"
has been addressed to the entire Muslim. God commands them to obey Him by adhering His divine-ordinances and to obey His the Most Noble Messenger as well as the holders of authority by following to their teaching and the governmental decrees. The decrees of the *Fugaha* must be followed by the people, it is the command of God. There is difference between the obedience to the God and the obedience to the Prophet. All ordinances of divine law, whether they concern to the worship or not, are the commands of God and their implementation is the obedience to God. The Prophet did not issue any command regarding prayer, he impelled men to pray, it was the way for confirming and implementing the God’s laws. When we pray we also obey God. Obeying the Messenger is different from obeying God. The command of the Prophet are those that he himself issued in the course of exercising governmental function; for instance, he commanded the Muslims to follow the army of Uthman.  

The Commander of the Faithful exercised powers, appointed governors and judges whom all Muslims were bound to obey. In the same way, Imam Sadiq also held an absolute authority and empowered to rule over all the *ulema* and the *Fugaha*. He named the *Fugaha* as “rulers”, so, that no one might presume that their function was restricted only to judicial affairs and divorces from the other concerns of government.

"Imam assigned to exercise the functions of the both government and judgeship to the *Fugaha*. It is the duty of the Muslims to obey this decree of the *Imam*.” Obeying the *Imam*, is the duty of the *Fugaha* since they have been appointed by him.

"The judicial and governmental functions granted by the *Imams* to the *Fugaha* of Islam are held perpetually”. The political authority is held by the *Fugaha*, is permanent in nature since they have universal authority to run society. “Imam has

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60 Uthman: Uthman ibn Zaid, was a third caliph, and a beloved companion of the Prophet Mohammad who was placed in-charge of a military expedition when he was only eighteen. He died in 59/679.
61 Khomeini, n.5, P.105
62 Ibid, P. 109
appointed the ulema of Islam to the positions of ruler and judge, and these positions belong to them sempiternal.”  

It is coming down from the tradition that those who are learned, they must rule over society. The learned man must take the reins of government to rule over society. As a matter of fact, the scholars are the heirs of the Prophet; the Prophet endowed not a single dinar or dirham, instead they endowed knowledge and whoever acquires it has acquired a generous portion of their legacy. Here “the Scholars” means the ulema. Those ordinances have been left by the Prophet are a form of legacy, and those who take these ordinances are his heirs. His heirs inherited “only of his ordinances and traditions, for the tradition states that the Prophet bequeathed knowledge.” In fact, the Prophet left things that could be bequeathed, “was his exercise of rule over the community, which was handed down by him to the Commander of the Faithful and then to each and every successive Imam.”

Ahmad Kasravi, a noted historian denounced the shiism and clerical pretensions to authority. In the defence of secularism against the superstitions of clergy published Shiagari (the shia tendency) in which he questioned the very core of Shia belief. His view on the leadership is very much different from Khomeini. He argued against an absolute wisdom and innocence of Imams which entitled them to rule, judge and interpret the laws of Islam. He did not assign the leadership of Muslim community to the clergy. Kasravi dismissed the very foundations of shia beliefs as well as its practices and concepts of honour and innocence.

With all its turns and shades, shiagari has concluded that authority and government of our time in the hand of the absent Imam. Mullayan follow this and say: we are the representatives of the Imam and we should be the rulers today... but even though they think that they should govern.

Ali Shariati was also against the institutionalisation of the role of the ulema. He endorsed Kasravi’s skepticism and questioned the very legitimacy of the ulema’s claim to represent.

63 Ibid, PP. 109-110
64 Ibid, n. 5. P.117
65 Ibid, P. 119
the Imam and act as the protectors of the oppressed and needy. He made distinction between the clergy before and after the Safavid period. When the Safavid adopted Shiism as the official religion of Iran the clergy became institutionalised. But once Shiism became institutionalised, the religious establishment became part of the ruling elite and endangered the religious despotism.

From the moment that Shiism succeeded in gaining formal recognition, from that moment it was vanquished. From the moment that the power that had been ranged against it began to accommodate it, they observed it, it ceased to be a dynamic movement, it became a powerful ruling institution.\(^67\)

That is why Shariati was against the institutionalisation of religion.

Bazargan did not justify the government of the jurisconsult (Velayat-e Faqih). Khomeini's edict of January 1988, proclaimed absolutist government of the jurisconsult. The total monopolisation of power in the hands of the governing jurisconsult is an unprecedented religious innovation that is neither rooted in the Quran and the Sunna, nor reflects democratic Quranic principle that "affairs of the people should be conducted on the basis of mutual consultation."\(^68\) Freedom Movement of Iran (FMI), Bazargan's political organisation pointed out that the absolute power of the jurisconsult subjects religion to political imperatives, but the distinguishing feature of an Islamic State is that religion would be in command and politics would be a dependent function of it. Therefore, it has been argued that Khomeini's edict is contrary to the Quran and the Sunna, since it equates the powers of the governing jurisconsult with that of God.\(^69\)

The blueprint for Islamic Government

Shiism would only permit political leadership to the ma'soum\(^70\) (immaculate), those descendants of the Prophet Mohammad who are protected from sin. It is noteworthy that only the

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\(^68\) Al-Quran, 42:38

\(^69\) Nehzat-e Azadi-ye Iran, Tafsil va Tahil-e Velayat-e Motlaq-e Faqih (Tehran: Nehzat-e Azadi Iran, 1988), pp. 97, 118.

\(^70\) Khomeini in his book Hukamaat-e Islami has elaborately explained the notion masoum.
descendants of the Prophet are free from the sin. Those powers which were exercised by the Prophet and by the Imams, "are also the prerogative of the Fuqaha".\textsuperscript{71} The core idea of the political analysis of the Velayat-e Faqih is the notion a benevolent ruler, who have universal authority. Motahhari, like his teacher Khomeini, had idea that only the clergy has had the cultural background to become the natural leader of any Islamic government. Only the clergy has the essential quality and ability to lead the Islamic government.\textsuperscript{72} Khomeini himself stated in his book \textit{Hukumat-e Islami} that "the scholars are the heirs of the Prophet." Here scholars means the ulema of the Muslim community. They are the heirs of the tradition of the Prophet, they did not bequeath a single dinar or dirham, they bequeathed his sayings and tradition. It means, they inherited only the knowledge. That is why, they are called the heirs of the Prophet. So, Shii political theory endorses it as long as the Twelfth Imam is in occultation, "it is our duty to obey the Velayat-e Faqih."\textsuperscript{73}

It is to be noted that Khomeini himself endorses that notion of collegiate government by a group of clergy, who repeatedly refers to the Fuqaha (religious jurisconsultants) who are just and would fight in God's way to implement the laws of Islam and its social system, as a natural emerged leaders of the Islamic government,

as long as they do not concern themselves with illicit desires and wealth of this world... If a Faqih has as his aim the accumulation of worldly wealth, he is no longer just and can not be the trustee of the Prophet and executor of the ordinances of Islam... Only the just Fuqaha who may correctly implement the ordinances of Islam and firmly establish its institutions, executing the panel provisions of Islamic law.\textsuperscript{74}

In a nutshell, the implementation of all government laws devolve upon the Fuqaha. Who are just. Khomeini states furthermore that no Faqih has "an absolute authority over all other Fuqaha of their own time, being able to appoint or dismiss them. There is no hierarchy among the Fuqaha, and no one Faqih is

\textsuperscript{71} Khomeini, n. 5. P.149
\textsuperscript{72} Murtada Mutahhari, \textit{Barresiyeh Ejmat-e Manabi-e Eqtesad-e Islami} (Tehran: Entesharat-e Hekmat. 1982). P.83
\textsuperscript{73} Kayhan, 23 February. 1988
\textsuperscript{74} Khomeini, n. 5. P.79
higher than another or endowing one with more authority than another."\textsuperscript{75}

The rise of single Faqih is to be the natural outcome of the model of government that Khomeini projects. He always argues about the Velaty-e Faqih which refers to Fuqaha than Faqih. At the time of his heday, he brought his theory, the Velayat-e Faqih into practice. He advocated only a singular male Faqih, would be the ruler of society.

When a mujtahid, religious leader, who is just and learned, struggles for establishing an Islamic government and succeeds, he will have the authority and rights in the affairs of society that were enjoyed by the Prophet. It is the duty of the people to listen and obey this Faqih. He will hold the supreme power in the government and management and control of social and political lives of the people in the same way as the Prophet and Ali had.\textsuperscript{76}

Just like Motahhari, Khomeini too, has a notion of guardianship of minors, paternalistic rule by a theocrat, is a threshold of his notion of the Islamic government. In fact, there is no difference between the guardianship of a minor and the guardianship of a nation.\textsuperscript{77} Just as a minor is looked after by his guardian in each and every matter, in the same way the guardian of a nation looks after his people in all matters. The guardian of a nation is accountable in the same way as the guardian of a minor if minor commits any mistake. So, there is no different between the guardian of a nation and the guardian of a minor. The method which Khomeini has adopted in analysing the Islamic government, indeed it is a hallmark of the Islamic government as outlined by him. In Khomeini’s view, there are no elections and no legislation because all laws are made by God, man cannot alter the laws of God, it is only the Faqih who rules, and everyone must obey willingly. The blue print for Islamic government envisages that there is no need of an extensive bureaucracy and judiciary to administer the country.

The theory of the Velayat-e Faqih has been projected by Imam Khomeini on the religo-politico basis, which postulates a future government would be led by a high-minded and high-spirited clergy

\textsuperscript{75} Ibid. P. 57
\textsuperscript{76} Ibid. P. 55
\textsuperscript{77} Ibid. P. 56
who will have to submit himself to the Will of God that is the Supreme Will and only Will prescribes the Islamic dictum for the people to follow them. As has been assumed by Khomeini that the people are deeply-devout, simple-minded, will accept the rule of religious men and follow their instructions. Religious taxes meet all the expenditure of the State whatever is incurred by the State in maintaining its social and political fabrics, and the religious courts will deliver the verdict without procrastination. There is no need for elections and representative government, in the sense of Western representative governments because the laws are God-gifted, these are prescribed by Islam and the representative body only delineates the laws on the Islamic lines and the clergy have emerged in society the best guide for the people and they have accepted reluctantly the burden of government. They will abandon the malpractice in the name of religion. All people will adhere the decrees of the Velayat-e Faqih and follow the path which will be led by the Faqih and protect from degrading the moral standard of Islam and the public face of Islam, and prevail peace and tranquillity in society. This view is a gist of future Islamic society which has been lying blueprint for the post-Revolutionary State in Iran upon which a theocratic future of the country will depend.

Bazargan denounced all forms of autocracy. Bazargan envisaged a clear separation between faith and its rituals and government and the state. His movement’s intention was to return the country to its constitutionalised base and to implement the constitution which guaranteed the freedom of all individuals and the welfare of all nationals. He did not envisage at any place an absolute rule by the Faqih. A number of religious leaders, including Ayatollah Mahmud Taleqani (who passed away suddenly in September 1979) and Kazim Shariatmadari supported Bazaran’s views that the state and the religious classes should be clearly separated and the integrity of the boundaries between religion and government should be maintained, a view not shared by Khomeini’s disciples in the Revolutionary Council.

Taleqani was against the religions despotism. He saw there is no conflict between a representative secular government and the demands of Islam. He stated about the autocratic theocracy.

The most dangerous of all forms of oppression are laws and restrictions forcibly imposed on people in the name of religion. This is the most dangerous of all impositions because that which is not from God is thrust upon the people to enslave and suppress them and present them from evolving, depressing them of the right to protest, criticise and be free. 79

He did not endorse the concept of the Velayat-e Faqih, government by religious leader. On this issue, he was supported by other amongst the clergy, who did not share his left wing tendencies, but had a high regard for a constitutional democratic form of government. The best known among this group is Ayatollah Kazim Shariatmadari.

Shariatmadari was a liberal clergy. He was the marjay-e taqlid of the Azarbaijanis, the powerful minority group of the north-western provinces. Shariatmadari was first and foremost a scholar, politically he demanded a return to the 1906-9 constitution. He thought it is not necessary for the ulema to govern the country at any time and they should supervise the temporal powers. According to Shariatmadari, Politically, the ulema were the provider of protection for people against injustices by the government; their role was an oppositional one. During the Revolution 1979, he began demanding reforms and return to parliamentary democracy.

After the Revolution 1979, Shariatmadari called for a pluralist political system where all groups should participate and elect officials, and not the clergy, wielded power. He was against the institutionalisation of the role of the clergy. He thought that the Faqih should be consulted in cases of major crisis and the clergy intervene only if the government contravened religious laws. His notion of government is a non-clerical notion of government. 80

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80 Omid, n. 11, p.55.
Position and status of the Velayat-e Faqih

The post of Velayat-e Faqih is a hub of all activities in the post-Revolutionary Iran, and the whole system is rotating around it just like the earth is rotating around the sun, it is a centre of the magnate from where the entire system is controlled. The post-Revolutionary Iran has institutionalised this pious post by incorporating in its constitution, and the State apparatus derive their legitimacy from this institutionalised post. The constitution states status, position, powers, functions and the duties of the Velayat-e Faqih in a very lucid way. Theoretically and practically, the Velayat-e Faqih’s position remains the locus of power in the Iranian political system around which the other offices of the State are spinning. The very basis of the legitimacy of the Islamic Republic is to be found in the doctrine of the Velayat-e Faqih and the system of power in modern Iran feeds from it.

The Velayat-e Faqih has got a central position in system of power in Republic from where powers are devolved and get its legitimacy. Khomeini once told Council which seemed to have forgotten its duties and responsibilities for obeying the Velayat-e Faqih, "Velayat-e Faqih has legitimate right to rule over society is a basic faith in Islam." 81 The Velayat-e Faqih’s ruling over society is sine qua non since he has legitimate authority due to occultation of the Twelfth Imam, that is why, the rule of the Faqih “is not a privilege but a grave responsibility.” 82 He is accountable for each and every matter in society if society is facing problem either religious or political, he has the right to issue fatawa to settle down crises, Mohsen Armin stated,

The Velaye-Faqih legitimises the Islamic government who leads it: It is the Velaye-Faqih, who is accountable for each and everything and rules over everyone, and is in-charge of the nation... Islamic society is governed in accordance with the views of the Velaye-Faqih. He is beyond required to take into account any one else’s opinions. 83

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81 Kayhan, 11 January, 1988
82 Khomeini, n.s. P. 79
83 Kayhan, 17 January, 1988
The Faqih has supernatural entity, and he is above the State because all requirements of the State is determined by it and the State will have to obey.

In Islam the Faqih has right to issue Fatawa, Islamic decrees, and to legislate and impel policies. These rights are granted to him by virtue of his Islamic Knowledge. It is his erudition and superior learning which legitimises his rule... by virtue of his erudition and astuteness, God has entitled only the Faqih to rule over the Muslim Community.

The Faqih has the same power in the governing of society as the Prophet and the Imams had.

The Velayet-e Faqih’s influence is deepen in the political system of Iran, it has pivotal position because it is nucleus from where powers are devolved and the three branches of government in exercising their powers and function derive legitimisation from this post. The position of the Velayat-e Faqih is such that all acts of government are legitimised from here, it is a source of legitimisation. The constitutions granted the Faqih overwhelming powers, so, he is the actual ruler of the country, his word is final in the matter of law and administration, and all will have to obey his directives. He has the supernatural identity in the political system and no one is above him. The whole system is twirling around this religio-politico post and the entire power have been concentrated in this religio-politico post.

After the Revolution 1979, a new constitution was framed along Islamic line to fulfill the aspirations of the Revolutionaries, but it was revised in 1989 due to some constitutional shortcomings and domestic compulsion. The revision of the constitution was started in April 1989 when Khomeini was alive and completed it in July while Khomeini had died on 3 June, 1989. By 11 July, 1989, the final amendments to the constitution had been made and it was put to referendum on 28 July, while the presidential election was held. It was done because there was weakness in the 1979 constitution which vaguely left undefined powers and responsibilities among the various centres of power in the republic which was overlapping one another that had been

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84 Kayhan, 23 January, 1988
apparent at least since the power struggle in 1980-81 between president Bani Sadre and Prime Minister Rajai and his Islamic Republican Party based on clerical supporters. There was continuous fighting between the theocrats and Bani Sadre for controlling the state power. In the struggle, the Islamic Republican Party (IRP) played major role. In the post-Revolutionary Iran, the ulema were controlling the state where all policies were made by the ulema. Both centres of power were competing each other to control the state apparatus. IRP and Bani Sadre had opposite idea about the nature and function of the state. The despotic theocratic state closed down all oppositional newspapers whereas Bani Sadre was against it. Bani Sadre in his daily paper made apprehension for the danger of theocracy. By using reminiscent of Ali Shariati, he indicated the threat posed by "religious fascism", "sacking to reestablish political despotism under the guise of religion." This fierce struggle for power proved costly for Bani Sadre. This struggle for power eventually culminated into the dismissal of Bani Sadre from the presidential post (through exercising a vote of no-confidence motion against the president by exercising its constitutional right by Majlis), which underlined the vagueness of the constitution. At the same time, the leader was limpidly aware of the destabilising consequences of such uncertainties on the entire system, especially in the absence of Khomeini and the interceder and the ultimate arbitrator. The 1989 revised constitution, institutionalised the doctrine of Velayat-e Faqih and the authority of the Faqih.

Khomeini got support not only from the cleric side, but from the non-cleric side also. A number of Muslim intellectuals, who supported khomeini though they did not have cleric back ground like Hasan Bani Sadre, Sadeq qutbzadeh and Ibrahim Yazdi. Unlike khomeini, this group sought to set up a form of democratic socialism in Iran. Like Shariati, Bani Sadre had firm belief in Islam with a conviction that Islamic rule would be representative, democratic and welfare oriented - which he

85 Engelabeh Eslam, 14 May, 1980.
already expressed widely in his writing on Islamic politics and economics.\textsuperscript{86}

\textbf{Powers and functions of the Velayat-e Faqih}

The \textit{Faqih} is the Supreme Commander of the armed forces and has the right to declare war.\textsuperscript{87} It is the most important function of the \textit{Faqih}. He is all in all of the armed forces, and issues ordinance regarding forces and has also power to declare war and peace on any country. He is the sole authority to declare war and peace and has also sole authority concerning mobilisation of general troops. The movement of troops within or outside the country depends upon the instructions of the \textit{Faqih}. The \textit{Faqih} can send the troops outside the country to defend or offend other country.

His power is not only restricted to the armed forces but also play an important role in determining the general policies of the Islamic Republic of Iran (in consultation with the Expediency Council). It has been already mentioned earlier that the all centres of power rotate around this since it is a nucleus of power, so, whole government policies are determined from here. He supervises the general implementation of agreed policies. The \textit{Faqih}'s decision is final in all the matters and will be accepted by all unquestionably.

Not the president but the \textit{Faqih}, who issues order for referenda. There is provision in the constitution that the major changes in the constitution can be brought through referenda. In referendum, the people cast their votes either in favour of or against of the changed provisions of the constitution. If they cast in the favour that is approved by the people, and if they vote against it, then disapproved.

Whenever differences crop up among the three branches of the government, the \textit{Faqih} settles down it amicably and also regulates relations among these three branches of the government. These three branches of the government come under direct control of the

\textsuperscript{86} See for instance, Bani Sadre's \textit{Bayanieyeh Jamhourieh Estami} (Manifesto of the Islamic Republic) Published in Paris in 1971.
\textsuperscript{87} Article 110
supreme leader, who is the leader of the umma. The entire responsibility of the government of the country fall upon the shoulder of the Faqih.

The Faqih has also the appointing and dismissing powers. The Faqih appoints six clergymen in the Council of Guardians. This Council examines whether the laws made by the Assembly has conformity with the Sharia or not. Being the Supreme Commander of the armed forces, the Faqih appoints and dismisses Chief of Staff of the armed forces, Commander-in-Chief of the IRGC and the Commander-in-Chief of the military and security force. These appointing and dismissing powers are very important for the Velayat-e Faqih. Through appointing and dismissing these armed forces, he controls directly over the entire armed forces. Not a single appointment can be made without his consent.

The Faqih appoints Director of Radio and Television networks. This is one of the most important and sensitive post in this modern world because it is an instrument of the propaganda. Both print media and electronic media plays an important role in making opinion regarding government policies. The mass-media feeds the information to the people at every level and plays an important role in the formation of the public opinion in this modern world, the minds can be controlled by the media, the coercive force cannot be always used to control the minds of the people. So, the control of the mass media by the Faqih is very important.

The Faqih signs the decree naming the President after elections. The President is directly elected by the people and after electing the President, the Faqih certifies his name.

These powers of Faqih are most important in carrying out the day-to-day administration of the country. These powers are necessary for discharging the duty because he is only the right-full ruler of the Muslim community.

88 Umma: the entire Islamic Community without territorial or ethnic distinction.
Succession

In Khomeini, so much power and authority were vested, so, the question of succession became central importance to the politicians. The constitution requires the Council of Guardians to set up an Assembly of Experts (Majlis-e Khebregan), with eighty three members elected to choose a successor for Khomeini.\textsuperscript{89} It is provision that there should a natural leader emerged and be accepted and endorsed by the Council of Guardians and the people, and then he could take on the mantle of the Prophet. If it is not possible, then the constitution return to the traditional solution usually adopted by the religious institution, namely that of having a "collegial leadership."\textsuperscript{90} The Assembly of Experts is to select three to five suitable Jurisconsults to take over the leadership.

When Ayatollah Montazeri, the heir-apparent of Khomeini resigned in March 1989, then the crisis of succession precipitated, and the Republic lost its stability owing to uncertainty of succession. His departure precipitated a constitutional crisis because there was no suitable candidate to fill the post of the \textit{Faqih}, Khomeini's thesis was that it could only be a male theocrat; who had excellent knowledge and be a religious leader who would not only have to take responsibility of office but also lead to the nation both by his own exemplary virtue and by his extensive and superior learning and erudition. The constitutional solution had been collegial.\textsuperscript{91} If a single \textit{Faqih}, who is accepted and recognised by the majority of the people, had failed to emerge naturally, then a Council of three or five religious leaders would take charge of the leadership.

The revised constitution 1989 removed the collegial option for leadership\textsuperscript{92}, and the idea of \textit{Velayat-e-Faqih} radically revised. Khomeini insisted that the leader would have an immense religious knowledge and vision and be a "loath" politician was replaced by the need to select a person who had the "correct political vision". It is clear from the amended constitution that

\textsuperscript{89} Article 108
\textsuperscript{90} Article 107
\textsuperscript{91} Article 107
\textsuperscript{92} Article 91
the individual who shall have stronger insight in matters involving jurisprudence and politics shall have preference.93

This revised constitution has given political precedence over religion and the political vision and farsightedness is more important than religious erudition. The new leader no longer had to be a fearless sources of enlightenment (marja or exemplary) in terms of justice and probity; instead he had to be prudent and have good political judgment and sufficient religious knowledge.94

The amended constitution has made specific provision in order to ensure stability in the event of death, resignation or removal of the Faqih. Until such time as the new leader will be introduced, a Council comprising the President, the Head of the Judiciary, and one of the jurists of the Guardians Council appointed by the Congregation for Determining the Expediencies shall provisionally assume all duties of the leader.95

The single Faqih doctrine is incorporated in the revised constitution in order to minimise instability at the highest level in the post-Khomeini era. The collegial leadership option regarded as an attractive formula in situation where a clear Faqih figure may have not emerged; which was obstacle to the survival of the post-Khomeini period. So, collective leadership formula was left because in collective leadership, the judgment might lead to indecision.

The leader's demotion to ranks and position of mere mortal posed a serious problem of legitimacy for a State which is carried on the basis of absolute obedience to the sacred laws of God. Who (the Velayat-e Faqih) is the shadow of God on earth. The Faqih is the highest source of emulation, then the Faqih is not one and the same as the Vali, then who has absolute authority and the right to rule in the name of God? But the thesis has been put forward in favour of a fallible and removable religious leaders who will rule over country. Khomeini has stated in his book that the powers of the Velayat-e Faqih are in no way inferior to those

93 Article 109
94 Article 109
95 Article 111
exercised by the Messenger of God and his son-in-law, Ali; his power and authority for governing society is exactly the same as they had. It has been assumed the infallibility of the leader that has made obedience to his ruling a religious duty without it how would people be expected to be obedient? The infallibility of the leader is the prerequisite for the obedience of the people which has made obedience a religious duty. The Majlis representative Seyed Hosein Hoseini stated,

our country has been saved by leader from numerous dangers. He has acted in this way because of the absolute obedience of the people to his ruling. His commandments and decrees have been above and beyond the law and the constitution. Neither Council nor government can claim to such sanctity an infallibility.96

The revised constitution had made the leader a mere human being, fallible without superior religious learning and without absolute probity, to rule over the country. In spite of this, the people are expected to obey the ruler.

It cannot be separated the leadership from marjayiat, being the source of Islamic knowledge and emulation. The leader is marjaeh taqled or not, we must be ruled by him. He is a religious leader, mujtahid, and he is just we must obey his decrees...... On matters of politics and the State it is the leader who rules absolutely. We must obey him as a matter of religious duty and we have no right to question his judgment, even if we are the most learned scholars of Islam and higher ranking ulama. Just as now the Imam’s decrees are binding, so in the future it is absolutely essential that we obey the decisions of our future leaders.97

The marjayiyat cannot be separated from the leader because the theory of the absolute obedience of people will be surrounded in controversy and how the people could obey a mere fallible man? The marjayiyat legitimises his absolute authority to be obeyed by the people. It is the mujtahid who will issue decrees whatsoever problem has been come to surface and settle down it through using decree, and the people obey it willingly. To obey commandments and the decrees of the leader, is the religious duty of the people.

96 Kayhan. 20 April. 1989
97 Kayhan. 20 April. 1989
Executive

The office of the President is one of the most important constitutional post in the land next to the Velayat-e Faqih. He holds the highest official authority of the country who is directly elected by the people through universal adult franchise. This post is politically viable and lucrative because it is next to the leader. "Next to the leader, the President of the Republic is the highest official authority of the country who is responsible for the enforcement of the constitution and presides over the executive power with the exception of those matters which directly relate to the leader." The President is the next to the leader (spiritual leader) means that even the president is directly elected by the people and is constitutionally head of the State but under the control and surveillance of the Velayat-e Faqih, and the Faqih has universal authority in running the State. The Faqih sign the name and issues the decree of the elected candidate for the post of the President after election.

The constitution 1979 created both the post of the Prime Minister and the President but it did not clearly define and allocate their powers and functions separately. There was no clear-cut demarcation of their authority in exercising their powers that was overlapping each other. The constitution's revision was completed in July 1989. This revised constitution abolished the post of Prime Minister and made a powerful President by assigning all executive powers to the President, and the President has exercised these powers without fear and favour. These Prime Ministerial powers were handed over to the President next to the leader (the spiritual leader). These overlapping powers ceased to operate after abolition of the Prime Ministerial post. In the Iranian Political system, the post of the Faqih is the highest post. The president is in-charge of both the Cabinet and all branches of the government.

The elected President selects his Cabinet Ministers to run the Government. The President nominates his Cabinet Ministers and put it to vote in the Majlis for their approval, and when Majlis

98 Article 113
99 Article 57.60.64.69.70.87.88.89, and 124.126.127.130.131
passes it by majority vote then they become Ministers and if they fail to secure the majority vote in Majlis then they cannot become the Ministers, so Majlis's ratification to be a Minister is essential. The president also controls all branches of the government. Ministers are hired and fired by the president subject to Majlis's ratification. The president is responsible for all commission and commission of the Cabinet. He has the power to remove an individual Minister from his Ministry. At the same time, it has been explicitly stated in the constitution, the president can not hold any Ministerial Portfolio. The constitution does not permit to hold any Ministry to the president in any circumstances. Thus, it avoids concentration of power in one hand and to be an omnipotent ruler of the country.

The President can not take the decision contrary to the Islamic tenets, rules and regulations. His decisions will be in conformity with the Islamic rules and regulation. So, those who will be an aspirant for the post of the president, they will apply for their candidature, and their candidature will be clear out by the Council of Guardians. Without clearance from the Council of Guardians, a candidate cannot contest the election for the post of the President.

Legislative

Legislation is one of the most important function of every government because changes in time and circumstances requires a new law to fulfill the needs of society. The legislature is one of the three branches of the government, whenever any shortfall is perceived in the existing laws then the legislature makes laws for overcoming these shortfalls. The world is not static but it is changing with the passage of time, so, legislation is necessary to fill the required needs of the time and circumstances. But the story of legislation in Iran is different because the Iranian Political system is governed under Islamic tenets and Islam does not admit anyone sovereign except God, and does not recognise anyone law-giver other then Him. So, here in Islam, legislation belongs only to God. The individual has no any

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100 Article 133.135.136
101 Article 141
role in legislation. "Human legislation, according to Islam, is and should be subject to the supremacy of Divine law and within the limits prescribed by it." Legislation in Islam is permitted only within prescribed Sharia, beyond Sharia there is no scope for legislation, man can not make laws because all laws are made by God. The Sunnis believe that there are four sources of law: the Quran, the Sunna, Ijma (consensus) and Ijtihad (qiyas); the Shias also have retained the same number and order concerning the sources of jurisprudence the Quran, the Sunna, Ijma, and Aql (reason) substituting reason for qiyas. These four sources of law are used in legislation. Whenever laws are made to accommodate with time and circumstances, only these four sources have to be used in making the laws, outside these four sources, there is no scope for legislation in Islam. "Islamic law is to form the foundation of all legislation." 

In Iran, there is three competing legislative agencies which perform their respective role in making the laws, these three competing agencies are the Majlis Shorayeh Islami (the Islamic Consultative Assembly), Council of Guardians, and the Council for the Determination of Expediency. The originating place of the bill is the Islamic Consultative Assembly, and firstly, it is passed in this Assembly then it moves to the Council of Guardians for its approval and if it is not passed by the Council of Guardians due to not conformity of the bill to the Islamic precepts, then it moves to the Council for the Determination of Expediency to examine the bill, and if the bill requires an urgent need to pass it for national interest then it is passed by the Council for the Determination of expediency.

Majlis Shorayeh Islami (Islamic Consultative Assembly)

The new Iranian National Assembly was created after 1979 Revolution. At the outset, the name of the House of Representative, was Majlis Shorayeh Melli (the National Consultative Assembly) but its name was changed after Khomeini’s instruction and became Majlis Shorayeh Islams (Islamic Consultative Assembly). The total strength of the Assembly is two

103 Article 4
hundred seventy and its representatives are directly elected by the people for the term of four years. The change in name has emphasised that Iran is a country ruled by God whose legitimacy is accepted by people rather than one that requires popular legitimisation. The main function of the Majlis is to fulfill its duty to the electorate for which has been elected by the people. It falls duty upon the people that they submit before the will of Majlis. Khomeini stated, "we must submit to the will of the Majlis and that would be submitting to the will of Islam and the Muslim.... Obeying the Majlis and its laws is part and parcel of our religious rituals and duties and is like paying homage to God." At the same time, he said, the Majlis is sovereign only so long as it follows the Islamic tenets.

Here is a potent question which the constitution has failed to solve the basic contradiction that is inherent in the concept of an Islamic government. The concept of an Islamic government has differed from the concept of other forms of governments. According to Islamic tenets, all laws are made by God, they can not be changed and they are eternal and only God is law-giver and no one has anything to say regarding the laws of Islam. If God is the sole source of all laws and no one has to say anything concerning the laws; and if the laws of God must be obeyed unquestionably, then how can an Islamic government accommodate any notion of democracy at least in the matter of elected legislature? The legislature makes laws for institutions and delineates administrative paths for running the State. The Islamic government does not need an elected legislature to make laws but this elected body is needed to delineate the administrative paths for the implementation of the Islamic laws. The constitution has designated the Majlis to be an elected representative body whose representatives would delineate the path for the implementation of the Islamic laws which have been given by God to accommodate this problem. This legislative Assembly is the single Assembly for making the laws which needs to be checked that it does not deviate from its assigned path. To make sure that this single legislative Assembly does not stray

104 Kayhan, 28 May, 1981
105 To get detail and elaborately see Khomeini’s Qasfat Asrar and S.A.A. Maududi, Political Theory of Islam.
form its path, its decisions have been to scrutinised and ratified by the Council of Guardians and the Faqih. An elected representative body is created in Iran only for the implementation of the Islamic laws and not to make or alter it.

Ayatollah Motahhari, a Shia political theoretician had also argued explicitly that the laws of Islam were eternal, so, there is no question of altering them according to the needs of the time and circumstances. The Islamic laws cannot be changed in any circumstances. It is common acceptance among the Shias that the true Islam had been ephemeral, so it could not delineate all paths of the Islamic rules, and is needed to accommodate with day-to-day problems. To solve these day-to-day problems, the concept of ijtihad has been used. "Ijtihad means the capacity to give expert opinion in matters of religion." Whenever any problem comes to surface, then a mujtahid issues decrees in this regard and becomes a law.

Legislation is an important function of the government, the laws are made by the elected representatives of the people or by the people themselves through public vote (referendum), must necessarily be based on Islamic tenets. Only that law has legitimacy and enjoys legality which may not be repugnant to the Islamic criteria. Hence, there cannot be formulated any law which is contrary to the Islamic precepts and such law cannot be enforced and acted upon. In Iranian system, the legislature has no right to draft a law which is contrary and repugnant to the Islamic injunctions and the Divine decrees. The constitution of Iran has been limpidly expressed that the Islamic Consultative Assembly has no right to formulate laws repugnant to Islam and all laws must be based on Islamic injunctions.

The constitution stipulates "all civil, penal, financial, economic, administrative, cultural, military, political and other laws and regulations regarding natural resources should be based upon Islamic precepts..." At the same time, the constitution also specifies the role of the Islamic Consultative Assembly:

107 Article 4
“the Islamic Consultative Assembly can not pass laws in contravention of the principles and precepts of the constitution or the official religion of the country.”

Shorayeh Negahaban (Council of Guardians)

The Revolution 1979 gave birth to the new constitution in Iran, this new constitution created a new constitutional body, namely the Council of Guardians to "guard Islamic laws." Without its ratification, the Majlis can not legislate on any matter. So, this body is the sine qua non for legislation, and not only for legislation but the existence of the legislature also depends upon this body. The constitution stipulates: "until the Council of Guardians is not formed the proceedings of the Assembly has no legal validity as such, and can approve only election of its own members besides electing six jurists belonging to the Council of Guardians." This Article manifests the importance of the Council of Guardians, until and unless the Council of Guardians is formed, the proceedings of the Islamic Consultative Assembly is legally invalid.

The constitution has made the Council of Guardians an independent body and does not form part of any of the three branches of the government, namely: the judiciary, the executive, and the legislature. However, on the one hand, its members are directly nominated by the leader, who is supreme and officially accepted by the absolute majority of the people, and under the provisions of the constitution it is he, under whose supervision, all the three branches of the governments. On the other hand, this body is also related to the legislature and the judiciary (which elects the members of the Council of Guardians). The constitution states,

the Council of Guardians shall be composed of 12 members out of whom six are to be qualified and just jurisprudents well-acquainted with the need of time and issues of the day. These individuals are to be appointed by the Leader or the Leadership Council. The other six shall be jurists qualified in various branches of law and must be Muslims and committed to religion. The Supreme Judicial Council shall introduce some qualified Jurists (generally twice the number required) and introduce them to the Islamic Consultative Assembly. Later, the

108 Article 72
109 Article 91
110 Article 93
Assembly shall take vote on them and those securing the majority votes shall be elected as members of the Council of Guardians.111

The members of the Council of Guardians are appointed for fixed tenure.

The members of the Council of Guardians are elected for a six-years term but in the first round after three years, half of the members each group (Jurisprudents and Jurists) are to be replaced by new members by drawing lots. This has been duly carried out in the first term of the Council of Guardians.112

The constitution does not say any thing for the re-election of the members of the Councils of Guardians at the end of the six-years term. However, the constitution is silent over this matter, this silence on the part of the constitution has been construed as non-prohibition of re-election and some of the members at the end of the six-years tenure have been re-appointed and re-elected for the next six-years tenure.

After passing all the laws by the Islamic Consultative Assembly, it must be sent to the Council of Guardians to overhaul it, and after close scrutiny unless ratified by the Council of Guardians, it is not constitutionally passed. The laws have been passed by the Assembly upon which the Council of Guardians has right to determine their compatibility and incompatibility with the provisions of the constitution and it is not confined only for particular laws and proposals. Prior to assent of the president, all the laws without any exception and without request of any individual or official, must be sent to the Council of Guardians after being passed by the Islamic Consultative Assembly.

All legislations passed by the Assembly must be sent to the Council of Guardians for examination. The Council of Guardians, in a maximum period of 10 days, must ensure that the contents of the legislation do not run contrary to Islamic precepts and the Principles of the constitution. If there is any contravention, it should return the legislation to the Assembly for re-examination and if not referred back, the legislation shall be enforceable.113

After passing the bill by the Assembly, it is instantly sent to the Council of Guardians. The Council of Guardians will have

111 Article 91
112 Article 92
113 Article 94
to peruse the law from two aspects; first, the law has been passed by the Assembly is not contrary to the provisions of the constitution; and second, it is not abhorrent to the Islamic precepts. Both jurisprudents and jurists members of the Council of Guardians are competent to examine a bill in order to ensure its conformity to the constitution. The majority of the members of the Council of Guardians will decide the consistency or inconsistency of a bill which is passed by the Assembly, and the constitutional validity will be ensured. The Council of Guardians has authority to pursue the law in terms of conformity to Islamic injunction and it falls under sole jurisdiction of the Fuqaha (the jurisprudent members) of the Council of Guardians and they reach on a decision by majority vote then it has to be accepted for its enforceability.

The division as to whether legislation passed by the Assembly complies with Islamic precepts rests with the Fuqaha of the Council of Guardians. As regards the question whether it complies with the constitution or not, is to be determined by the majority of the Council of Guardians.114

When a bill is approved by the Assembly, the bill is sent to the Council of Guardians for its approval. The Council of Guardian has only two options before it, either endorses it or rejects it. If the bill is passed by it then does not matter, but if it does not pass it then further creates problems. The Council of Guardians passes the proposed bill of the Assembly after scrutinising it that it is either contrary to the Islamic precepts or not, if they finds the proposed bill is not contrary to Islamic tenets then its decision is conveyed to the Assembly, and the bill is sent by the Assembly to the president for his assent, and notification is issued by him to the Government for its enforcement. But the majority of the members of the Council of Guardians find that the proposed bill by the Assembly is either contrary to the constitution or Islamic injunctions, then it is sent back to the Assembly by the Council of Guardians and the Assembly is obliged to amend in accordance with the exceptions taken by the Council of Guardians to the proposed bill and return it to the Council. Eventually, the Council of Guardians declares that the proposed bill is not contrary to the constitution.

114 Article 96
constitution and the Islamic tenets, then the bill becomes a law after getting signature of the President.

But there is prescribed time-limit under which the Council of Guardians has to examine and approve or reject the bill which is proposed by the Assembly. According to article 94 of the constitution, the Council of Guardians has 10 days time from the date of it receipt to overhaul a legislation and express its opinion on it. It is further said in the Article, if the Council fails to express its opinion within prescribed time-limit then the Assembly bill automatically shall be passed and it shall be sent to the president for his assent. There is also provision in the constitution for the extension of time-limit. "If the Council of Guardians feels that 10 days are inadequate for the examination of the legislation, it can ask the Assembly to extend the period for a further 10 days, giving its reason for such a request".115

In case when an emergency bill is on the Assembly agenda, members of the Council of Guardians are obliged to attend the Assembly session and express their views right there in this regard. In such cases, in view of the presence of the members of the Council in the Assembly, the ratification does not require to be referred to the Council.116

It is also provision in the constitution. "If possible the Council of Guardians must express its opinion without any delay, and if not, then within a maximum period of 24 hours following the Assembly’s opinion."117

There is a clear procedure for the voting system in the Council of Guardians. The quorum of the Council of Guardians is complete with the presence of its nine members. But in emergency cases, it holds its session with the participation of seven members only. Nevertheless, the decisions have been taken by the absolute majority of votes. The decisions will be taken by majority votes at least seven out of 12 members in the cases of constitution and four out of six members in the matter of determining the compatibility of a law with Islamic precepts and injunctions.

115 Article 95
116 Article 97
117 Article 86
The Council of Guardians is so important that the interpretation of the constitution "lies within the jurisdiction of the Council of Guardians, and the courts have not been authorised to interpret the constitution." Moreover, the need for approval of the qualifications of the presidential candidates by the Council of Guardians; necessity for holding the oath-taking ceremony of the president inside the Islamic Consultative Assembly in the presence of members of the Council of Guardians; and the Council of Guardians' assigning task for supervising the presidential election and the Islamic Consultative Assembly elections, and its task of holding referendum, are in themselves the guarantor of the permanent presence of the Council of Guardians and as a non-suspension body.

Majmaeh Tashkhiseh Maslehateh Nezam (the Council for Identifying the National Interests of the Government):

There was clash between the Council of Guardians and the Islamic Consultative Assembly over the legislation matter. The Council of Guardians is an independent body which has authority to declare any law invalid which is contrary to the constitution and that does not have conformity to the Islamic precepts. It has been already stated earlier, the Assembly sends the bill to the Council of Guardians after passing it to get its approval, without ratification of a bill by the Council of Guardians, it can not become a law, to be a law its ratification is sine qua non. Not the judiciary, but only the Council of Guardians has overwhelming powers in the matter of legislation. This overwhelming power of the Council of Guardians bring collision with the Assembly. So, to avoid these clashes, the constitution has created a body, namely, Majmaeh Tashkhiseh Maslehateh Nezam for smooth legislation. To sort out this problem, constitution

118 Article 98
119 Article 110 (4) "... The competence of the candidates for presidency of the Republic regarding the qualifications set forth in the constitution should be confirmed by the Council of Guardians before elections and in the first presidential term, by the Leadership"
120 Article 121: "The President shall take the following oath and affix his signature to it in a special session of the National (Islamic) Consultative Assembly attended by the Chief Justice of the Supreme Court and the members of the Council of Guardians..."
121 Article 99: "The Council of Guardians has the responsibility for supervising the elections of the president of the Republic, the elections for the National (Islamic ) Consultative Assembly, general elections and referendum."
has created the 13-member Expediency Council, and recognised the body,

formed for the purposes of determining the proper acts and things deemed expedient in cases where ratification of the Majlis shall be rejected by the Guardians' Council on grounds of inconsistency with the principle of Holy Sharia or the Constitution. The congregation shall be formed upon the instructions of the leader.\footnote{Anoushirvan Ehtishami, After Khomeini: The Iranian Second Republic (London and New York: Routledge, 1995), P.41.}

To thwart day-to-day clashes between the Council of Guardians and the Assembly was imperative to secure and maintain stability and tranquillity of the system. The day-to-day clashes between two constitutional bodies might be aggravated crises for the system and destabilised the system. By creating this body, the brewing problems of the system is positively thwarted.

The Council's membership is to be determined by the leader, who will appoint its members either permanently or temporary, and the leader will ask advice from these members. "This Council's role is to arbitrate between the laws of Islam, as expressed by the Council of Guardians, and the political expediency as expressed by the Majlis."\footnote{Article 112} The aforesaid Article has stated the Council's role will be a arbiter between the laws of Islam as expressed by the Council of Guardians and the political expediency as expressed by the Assembly. The Council's role is to compromise between the Guardians' Council and the Assembly when they are in deadlock on any issue. This Council takes into account the political compulsion of the country in the formulation of the laws, and this political compulsion and expediency play the greater role in deciding the matters and it mediates between both these actors by taking into account the argument of both parties.

Judiciary

Judiciary is one of the important organ of the government in the political system of Iran. The main function is to dispense the justice to all people without any distinction and discrimination. In this politico-ideological State, the ideology has its influence over each and every institution of the country,
and the judiciary has not spared without its sway, and the whole judicial system has come under Islamisation. The Islamisation of the judicial system is a penetrating and long term effect on the entire system of the country, which brings its stability and has firm grip over the system as a whole. The structural alteration in judiciary along Islamic lines was needed to fulfil the purpose of this Revolution. The courts had been remodelled in such way that they could oversee the implementation of the Sharia laws. In August 1982, the government declared null and void "all pre-Revolutionary laws that were considered un-Islamic, including the Family laws."\textsuperscript{124} The new Islamic system of qisas (retribution) has been introduced in 1983 and made emphasis on speedy justice. The Western codes and conducts of the judiciary has been changed in the way of Islamisation of the courts. The previous regimes which adopted the Western procedures in the functioning of the judiciary had been divorced by the new Islamic regime by introducing its own new Islamic procedures, codes and conducts in functioning the judicial system and dispensing justice to all people. The style of functions of the new restructured judicial system is not as the pre-revolutionary regimes had. The new regime has introduced Islamic system of retribution both in form and substance is closely resembled to the Saudi Arabian model. It has introduced dismembering and amputation of fingers or a hand of theft, flogging for fornication and violation of the code of dress for women and stoning for adultery. "The execution aspect of the judicial practices have also been stepped up especially in regarding to Islamic codes and conduct."\textsuperscript{125}

The constitutional amendment 1989 did not only affect the other organs of the government but affected also the judicial system of the country. The amended constitution 1989 abolished "the five-member Judicial High Council as the highest judicial authority in the republic and replaced it with a single appointment (made by the Faqih) to be known as the Head of the Judiciary (Chief Justice)."\textsuperscript{126} Constitutionally, the Chief Justice is appointed for a five years term and he is accountable for all

\textsuperscript{125} Kayhan, 21 November, 1989
\textsuperscript{126} Article 157
judicial administrative and executive matters. For each and every matter of justice, the Minister of Justice is responsible to the Chief Justice despite he is appointed by the president. Minister of Justice is to be chosen by the President from "among those proposed to the president by the Head of the Judiciary." It is provision in the constitution that "it is the religious leader and not the Minister who is empowered to appoint the judges," including the "Head of the Supreme Court and the National Public Prosecutor, both of the whom has to be religious leaders." The religious leader constitutionally has firm control over the judicial system of the country because he makes an important appointment in the judicial system. "The Head of the Judiciary is empowered to change or remove a judge after consultation with the Head of the Supreme Court." The Head of the Judiciary is appointed by the Faqih and the Head of the Judiciary has authority to change or remove a judge with the consultation of the Head of the Supreme Court, it means that the judicial system has been moved towards the centralisation since until recently it has enjoyed a high degree of regional and judgeship autonomy. It is the process of Islamisation, which has moved towards centralisation of the judicial system.

The powers of the government in the Islamic Republic are vested in the legislature, the executive and the judiciary, functioning under the supervision of the Velayat al-amr and the Leadership of the Ummah, in accordance with... Articles of the present constitution. These three powers are independent of each other, and the liaison between all three of them is provided by the President.

The unprecedented revolution in the name of Islam in the history of Iran, and demise of the old rotten system, and the birth of the Islamic Republic, was an unique where political system as a whole came under the garb of Islam. In the post-Revolutionary Iran, the religio-politico post, the Velayat-e Faqih has been created and institutionalised and assigned overwhelming powers. The Velayat-e Faqih's unparallel stature and position and overwhelming power in the Iranian political system has been derived from the Imamate system, which implies that the

127 Article 60
128 Article 160
129 Article 162
130 Article 164
131 Article 57
Velayat-e Faqih is the legitimate ruler over the country since Twelfth Imam is into occultation. In the absence of the Twelfth Imam, no one but only the Velayat-e Faqih is a true leader and legitimate ruler. On this theoretical concept Khomeini developed his theory of the Velayat-e Faqih and became first Velayat-e Faqih of Iran.

The overwhelming policy of Islamisation of the political system did not leave any part of the system spare. Legislature, executive and judiciary was heavily Islamised and came under the control of the Velayat-e Faqih. An independent constitutional body, the Council of Guardians has been created in the process of Islamisation of the political system to see whether the legislation is according to sharia or not and this body works under the guidance of the Velayat-e Faqih who is the supreme authority in the land. Although the president is directly elected by the people but he has no so vast authority as the Velayat-e Faqih has. The whole system is rotating around this post because it is only legitimate seat of power from where the entire system deriving its legitimacy. Islam's penetration in the political system of Iran is deep, vast and indelible at the theoretical and conceptual level with apparent power structure.