1.TENSIONS AND AMBIGUITIES IN IRANIAN MEDIA LAW

by Kyle Bowen



Though political Islam sits at the core of Iranian state ideology, its employment as a basis for media governance and regulation has proven to be problematic, and deeply contentious.

Over the course of the last century, through the Pahlavi era and the Islamic Republic, the Iranian media environment has experienced significant levels of state censorship and control. Government censors have meddled in newspapers, radio, publishing, television, and most recently the internet, in order to curtail popular dissent and defend the ideological and political basis of the state.

This chapter, which is divided into three sections, addresses the legal and constitutional background against which state censorship in Iran takes place. The first section outlines the ideological background and context of the Iranian constitution, the second discusses the provisions of the constitution pertaining to freedom of expression and discusses relevant legislation, and the third offers two case studies to illustrate how these legal and regulatory frameworks function in practice.

Identity Crisis: Media and Culture in the Pre-Revolutionary Period

For most of the twentieth century, Britain and Russia, and then the United States, exercised strategic control over Iran's foreign policy and domestic politics, including the creation and maintenance of the Pahlavi dynasty.

Flynt Lawrence Leverett and Hillary Mann Leverett, Going to Tehran (2013: 27)

Prior to the 1979 revolution, Iran had been subject to the control of foreign countries and had exogenous values imposed on it. The primary objective of the new constitutional order of the Islamic Republic of Iran was defined through the forceful protection and propagation of Sharia law, Islamic culture and values, and vocal resistance against foreign influence. Iran's media policy was formulated against this historical backdrop.

Before the revolution, much of Iran's modern history was characterised by foreign interference. Iran's geographic location— at the edge of the Persian Gulf and at the intersection of the Middle East, South Asia and Central Asia—coupled with its ample supply of hydrocarbon reserves, made it a subject of imperial ambitions (Ibid).

'Strangers to Ourselves'

Opposition to the Western social and cultural values imposed by the Pahlavi elite¹ formed the ideological impetus for the revolutionary movement. One of the most influential scholars in this regard was Jalal al-e Ahmad, whose seminal work Occidentosis ("Westoxification") launches what anthropologist Roxanne Varzi describes as "a seething critique of the West's cultural hegemony in the Middle East" (2011: 56).

Al-e Ahmad argued that Islam had historically constituted a bulwark against Western cultural imperialism, and articulated the alienation felt by Iranians upon whom exogenous cultural values had been forcibly imposed.

We are like strangers to ourselves, in our food and dress, our homes, our manners, our publications, and, most dangerous, our culture. We try to educate ourselves in the European style and strive to solve every problem as the Europeans would.

Jalal Al-e Ahmad, Occidentosis, 1962 (1984: 57)

At the same time, Al-e Ahmad noted ruefully that at the turn of the twentieth century, the clerical establishment became increasingly

Pahlavi-era cultural policies promoted a version of Iranian nationalism that was generally devoid of Islamic features, and which fully embraced many European cultural norms and features in pursuit of an idealised notion of 'modernity'. For an overview of early Pahlavi-era cultural policies, see (Devos and Werner, Culture and Cultural Politics Under Reza Shah, 2013)

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Leading revolutionary ideologists Al-e Ahmad, Ali Shariati and Ayatollah Khomeini each launched scathing attacks on what Shariati called 'Safavid Shi'ite' clergy — clerics concerned more with deliberations over proper Islamic practice regarding topics as trivial as menstruation, childbirth and urination, rather than politics.

For more on these criticisms, see (Ganji, What is Our Problem?, 2011: 127-31)

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Al-e Ahmad proposed that the clergy should install transmitters in the holy cities of Mashhad and Qom, in order to stoke rebellion against the government, and the state's 'Westernisation' programmes.

insular and withdrawn from public life. As he explained, "the clergy was the last citadel of resistance against the Europeans, but in the Constitutional Era, with the onslaught of the first wave of the machine, the clergy drew into their shell and so shut out the outside world" (Ibid).²

Reiterating the notion that Islam provided an important counterbalance to Western culture and values, and recognising that media can serve as an avenue through which (Islamic) resistance to these foreign values can be articulated, Al-e Ahmad suggests that the clergy could have helped stem the tide of Western cultural invasion through more effective use and control of the media³.

These two themes—Islam as a source of opposition to Western culture and media as a conduit through which it may be expressed—foreshadow the intellectual underpinnings of the Islamic Republic's media policy.

Towards a Revolutionary Ideology

Al-e Ahmad's work furnished the intellectual foundations of the revolutionary movement and had a profound effect on Ayatollah Khomeini. Varzi argues that Al-e Ahmad's writings provided Khomeini "with an unwavering revolutionary discourse, steeped in strong existential, postcolonial, and Marxist philosophy" (2011: 59). Indeed, echoes of Al-e Ahmad's thought reverberate through Khomeini's own teachings.

[The Western imperial powers] regarded it as necessary to work for the extirpation of Islam in order to attain their ultimate goals... They felt that the major obstacle in the path of their materialistic ambitions and the chief threat to their political power was nothing but Islam and its ordinances, and the belief of the people in Islam... This slogan of the separation of religion from politics and the demand that Islamic scholars should not intervene in social and political affairs have been formulated and propagated by the imperialists.

Ayatollah Khomeini, Najaf Lectures, 1970 (in Leverett and Leverett, 2013: 168-9)

For most of the 20th century, powerful foreign nations had interfered in Iran's domestic and foreign affairs. At the same time, Islam was viewed, by Iranians and Westerners alike, as a source of resistance to imperial ambitions. The Islamic Republic placed great value on the preservation

of Islamic culture and was acutely concerned about the introduction of Western values.

The Islamic state, which came to power after 1979, more than anything else defined itself in a 'cultural' sense. The two aims of the cultural policy of the new state were based on destruction of an imposed 'western' and 'alien' culture, and the replacing of it with a dignified, indigenous, and authentic Islamic culture which had declined under the previous regime. As a result of such broad cultural aims, the state began to develop a whole range of institutions to implement and safeguard the'Islamic' culture of Iran.

Gholam Khiabany, Iranian Media: The Paradox of Modernity (2010: 139)

Escape Clauses: The Iranian Constitution and the 1986 Press Law

The mass-communication media, radio and television, must serve the diffusion of Islamic culture in pursuit of the evolutionary course of the Islamic Revolution. To this end, the media should be used as a forum for the healthy encounter of different ideas.

Constitution of the Islamic Republic of Iran, (1979: Preamble)

The introductory phrases of the Iranian Constitution outline the role media is expected in play in the propagation of revolutionary Islamic values. Embedded in these opening refrains are intimations of a core tension that underpins many debates about censorship in the Islamic Republic.

The second sentence gives a nod to the importance of pluralism and free expression in creating an environment that fosters "the healthy encounter of different ideas." However, the first sentence circumscribes media freedom by delineating the primary purpose of the media: "the diffusion of Islamic culture." The phrase "to this end" at the beginning of the second sentence indicates that media diversity is not an end in itself, but rather a means of propagating Islamic values. As Sreberny and Khiabany point out, "although there are references to freedom, dignity, debate and development of human beings, the main aim of the media seems to be the construction of Islamic society and the diffusion of Islamic culture." (2010: 63-4)

This tension between rights and liberties on the one hand, and the protection and preservation of Islamic values on the other, permeates the constitution. Article 23 states: "The investigation of individuals'

beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief". Yet when it comes to publicly expressing those beliefs, this right is far from absolute.

The freedom of expression and dissemination of thoughts in the Radio and Television of the Islamic Republic of Iran must be guaranteed in keeping with the Islamic criteria and the best interests of the country. Constitution of the Islamic Republic of Iran, Chapter XII, Article 175

Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law.

Constitution of the Islamic Republic of Iran, Chapter III, Article 24

The above articles demonstrate the ambiguities inherent to the constitution's free speech and media protections, subject as they are to 'exceptions' in the name of ill-defined national and religious interests. The constitution is, therefore, riddled with a number of escape clauses through which the conservative judiciary may dilute any articles that are ostensibly in place to preserve freedom of expression. It wasn't long before the Islamic Republic added an additional layer of media regulation on top of these shaky legal foundations. The landmark Press Law of 1986 is a comprehensive piece of legislation that addresses a wide range of issues related to media law and regulation in the Islamic Republic of Iran.

[The media should] campaign against manifestations of imperialistic culture (such as extravagance, dissipation, debauchery, love of luxury, spread of morally corrupt practices, etc.) and to propagate and promote genuine Islamic culture and sound ethical principles.

Iranian Press Law, "Mission of the Press", 1986

The 'Mission of the Press' illustrates clear parallels with Al-e Ahmad's vision of an activist clergy who would "arm itself with the weapons of its enemy" and "translate general religious principle into specific injunction through its own media outlets" (Al-e Ahmad, op. cit.: 57).

In both texts, the media is viewed as a tool to combat Western cultural hegemony, as well as a means with which to propagate Islamic values. The subsequent chapter of the law, which addresses the rights of the press, faithfully adheres to this framework.

The press have the right to publish the opinions, constructive criticisms, suggestions and explanations of individuals and government officials for public information while duly observing the Islamic teachings and the best interest of the community.

Iranian Press Law, Chapter III, Article 3, 1986

Pursuant to Article 24 of the Constitution, which affirms the right to free expression "except when it is detrimental to the fundamental principles of Islam or the rights of the public," the Press Law lists nine examples of topics the press is forbidden to broach.

- Publishing atheistic articles or issues which are prejudicial to Islamic codes, or, promoting subjects which might damage the foundation of the Islamic Republic;
- Propagating obscene and religiously forbidden acts and publishing indecent pictures and issues which violate public decency;
- Propagating luxury and extravagance;
- Creating discord between and among social walks of life, especially by raising ethnic and racial issues;
- Encouraging and instigating individuals and groups to act against the security, dignity and interests of the Islamic Republic of Iran within or outside the country;
- 6. Disclosing and publishing classified documents, orders and issues, or, disclosing the secrets of the Armed Forces of the Islamic Republic, military maps and fortifications, publishing closed-door deliberations of the Islamic Consultative Assembly or private proceedings of courts of justice and investigations conducted by judicial authorities without legal permit;
- Insulting Islam and its sanctities, or, offending the Leader of the Revolution and recognized religious authorities (senior Islamic jurisprudents);
- 8. Publishing libel against officials, institutions, organizations and individuals in the country or insulting legal or real persons who are lawfully respected, even by means of pictures or caricatures; and

 Committing plagiarism or quoting articles from the deviant press, parties and groups which oppose Islam (inside and outside the country) in such a manner as to propagate such ideas (the limits of such offenses shall be defined by the executive by-law). Iranian Press Law, Chapter IV, Article 6, 1986

The Press Law also prohibits printing and publishing without a license (Article 7), and delineates the purview of the Press Supervisory Board, which is responsible for examining applications for press licenses and assessing the competency of the applicant and the managing director.⁴

Constructive Criticisms

Part of the judicial ambiguity stems from the Islamic Republic's administrative environment in which several regulatory bodies have overlapping, and sometimes conflicting remits⁵.

Khiabany explains that in post-1979 Iran, parallel organisations were established alongside existing institutions: the Revolutionary Guards alongside the Army, the Revolutionary Committees alongside the Police, revolutionary courts alongside general courts, and various foundations that competed directly with government ministries (2010:144-5). The existence of such parallel organisations with competing visions of their respective role within the Islamic Republic inevitably produces a degree of institutional tension between the various factions. As Sussan Siavoshi observes, "although every faction declared its commitment to Islamic cultural ideals, all consensus vanished when it came to the question of what these ideals were and which policies were required to achieve them" (1997: 513).

These observations point to another tension in Iranian media law: not only is there disagreement between various agencies over which policies could best promote Islamic ideals and which agencies could best execute them, there is also a lack of consensus regarding the nature of those ideals. One of the most striking features of Article 4 of the Press Law, the stated purpose of which was to specify the prohibitions on press freedom, is the broad and ambiguous nature of many of its provisions.

For example, the prohibition on "Insulting Islam and its sanctities, or, offending the Leader of the Revolution and recognized religious authorities" could be understood as a ban on any criticism of the

In another example of the endemic ambiguity in the realm of Iranian press law, it is unclear whether the Press Supervisory Board's authority is limited to granting and revoking press licenses, or if it is also entitled to render judgements on press offenses.

For a comprehensive review of the competing regulatory and judicial institutions dealing with press law violations, see (Khiabany, 2010: 144-147).

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government, given that the government is itself largely constituted by religious authorities. And while Section Two prohibits publishing material that "violate[s] public decency," public decency is not defined.

Moreover, Article 3 codifies the right of the press to publish "constructive criticisms... while duly observing the Islamic teachings and the best interest of the community," however it is not specified which Islamic teachings are most important, nor is there any enumeration of what constitutes "constructive criticism" or the "best interests of the community."

The textual ambiguity of the Iranian Constitution and the Press Law is a contributory factor to the tension that underpins debates and discussions about censorship, the cultivation of Islamic culture, and resistance against Western values.

In summary, Iran's history of domination by foreign powers left Iranian intellectuals acutely concerned with combating Western values while they set about forcefully cultivating and propagating an indigenous culture. For scholars such as Al-e Ahmad and religious leaders including Khomeini, Islam fulfilled both objectives in that it represented a bulwark against Western cultural imperialism and a potential source of indigenous socio-cultural values. This was the ideological impulse that animated the creation of the Islamic Republic's Constitution.

Translating these ideological commitments into concrete policies proved a daunting challenge and the process was often fraught with conflict. Though political Islam sits at the core of Iranian state ideology, its employment as a basis for media governance and regulation has proven to be problematic, and deeply contentious.

The problems with the Iranian media and ICT environments are intertwined with the broader legal framework in the country. The Islamic Republic Constitution, which allows and recognises political participation and keeps alive the rhetoric of the popular revolutionary mobilisation of 1979, nonetheless keeps an ultimate veto for the ruling clergy on the basis that sovereignty belongs not to the people but to God, and in reality to his representatives and the guardians of his will. There is nothing in the holy text as to what Islamic media ...should look like. What has been offered is made-up law in the interest of the Islamic Republic, and the press has been regulated and controlled as such.

The Law in Practice: Case Studies

Case One: The Narenji Bloggers

Meaning "orange" in Farsi, Narenji's content primarily consisted of "mixed reviews of the latest Android and iPhones, summaries of new Persian-language apps and downloads, as well as the latest Internet memes" (O'Brian, 2014) Narenji⁶ was one of Iran's leading websites for gadget and technology news. However, on 2 December 2013 the popular site abruptly suspended its activities after 7 of its editors were arrested by the Revolutionary Guard. The local judiciary in the province of Kerman, where the website's headquarters were based, announced that the staff had been sentenced to 1 to 11 years in prison. It remains unclear whether or not they were allowed access to lawyers or due process (Kamali Dehghan, 2014a).

Another ambiguity in this case concerns the charges on which the bloggers were convicted. Yadollah Movahed, a member of Kerman's local judiciary told reporters that Narenji's editors were "providing content to anti-state and anti-Iranian media," adding that they "had direct contact with satellite channels such as BBC Persian" (in Kamali Dehghan, 2014b). The head of Kerman's justice department, Ali Tavakoli, insisted that the arrested bloggers had confessed to "being tasked with fuelling social tensions, spreading doubts and misrepresentations" (in Kamali Dehghan, 2014a). Specific details of these transgressions were not provided.

The vague wording of the Iranian Constitution and the Press Law gives authorities a broad remit to censor content they deem unacceptable. Yet the relatively apolitical nature of the website raises the question of what it was about this website the authorities found so objectionable. The justification cited by the Kerman justice department draws on a well-established trope in Iranian jurisprudence: the threat of Western soft power. In a press conference, Tavakoli repeated emphasized the group's alleged relationship with BBC Persian:

This gang was running a number of projects and plans for antirevolutionary Iranians based abroad, especially for the BBC Persian under the guise of legitimate activities.

Financial aid for this group was usually provided from London under the pretext of charitable donations. The director of the team was an individual who has served the BBC as a mentor and teacher in a number of countries such as Malaysia, India and Afghanistan and his travels to these countries was paid for by British intelligence services. Ali Tavakoli, Head of Kerman Justice Department (in Kamali Dehghan, Ibid)

In a narrative tradition fitting neatly with Jalal al-e Ahmad's conception of an Iranian culture imperiled by its failure to guard against the invasion of toxic Western values, Iranian media sources frequently characterise Western powers as the conspiratorial puppet masters behind domestic crises. For more see: (Zonis and Joseph, 1994)

The references to London, the BBC, and British intelligence services reinforce the impression of Western influence as a threat to Iran. While the BBC has denied any involvement in Narenji's editorial policy, (Kamali Dehghan, Ibid) claims of Western meddling in Iran's media resonate strongly in Iranian public discourse. The justification used to arrest the Narenji bloggers is therefore eminently compatible with the philosophy that laid the intellectual foundation upon which the Islamic Republic's constitutional order was constructed.

The broad nature of the Press Law gives officials a substantial amount of latitude in deciding which media outlets require censorship. This is not to suggest that Iranian officials always present a united front when fighting censorship battles: when there is tension between various segments of the Iranian government, cases of media regulation often become sites of contestation between competing factions.

The textual ambiguity of the Press Law grants judicial authorities the power not only to crack down on speech it deems unacceptable, but also to challenge other elements in the Iranian political establishment. In the case of the Narenji bloggers, there is some evidence to suggest that this type of institutional wrangling played a role.

Hassan Rouhani, elected as Iran's president in 2013, has made moderate reform a centerpiece of his platform. He has made diplomatic overtures towards the United States, and has pushed for a more liberal internet policy.

Some people think we can fix [our] problems by building walls, but when you create filters, they create proxies... this [current policy of censorship] does not work. Force does not produce results.

President Hassan Rouhani, 7 September 2014 (in The National, 2014)

Rouhani's ostensibly moderate agenda has sparked a backlash among Iranian conservatives, with battles over the future of the internet in Iran emerging as key sites of contestation between reformists and hardliners. Some analysts believe the case of the Narenji bloggers to be an illustration of this dynamic.

Narenji's arrest by the local Kermani Revolutionary Guard may be a deliberate response by local radicals against the Rouhani administration's encouragement of tech entrepreneurs: a signal that makes clear that Tehran should not go too far in its moderation.

(O'Brian, op. cit.)

I believe the arrests, especially of the Narenji team, to be part of the reaction of the hardliners within the Iranian establishment to the attempts of President Rouhani to move towards the opening up of cyberspace and the media sphere; and to relax the previous rigid attitude towards contacts with foreign institutions.

(Kamali Dehghan, 2014a)

Crucially, the ability of a conservative judiciary to undermine a moderate president in this way is predicated on the vast interpretative discretion that Iran's broadly-worded legislation and constitution afford.

Case Two: Marzieh Rasouli

Marzieh Rasouli is a female Iranian journalist who wrote primarily about the arts for several reformist newspapers, including Shargh and Etemaad. On 8 July 2014, she reported to Tehran's Evin prison to begin serving a two year sentence for 'spreading anti-government propaganda.' (Kamali Dehghan, 2014c) This was not her first offense; Rasouli was also arrested in January 2012, along with two other journalists, Parastoo Dokoohaki and Sahamoldin Borghani. The day before they were released after posting bail, the Revolutionary Guards put out a statement accusing them of collaborating with the BBC and British Intelligence. (Reporters Without Borders, 2013)

As with the Narenji bloggers, the fear of Western meddling in Iranian society, enshrined in both the philosophy of Al-e Ahmad and the Constitution of the Islamic Republic, can be marshalled to justify all manner of censorship. Although the BBC was not mentioned in the list of charges that precipitated Rasouli's more recent arrest, intimations of the concern for preserving Iran's indigenous cultural and political order can be detected in the accusations that were levelled against her.

According to The Guardian, Rasouli was charged with "spreading propaganda" against the ruling system and "disturbing public order" (Kamali Dehghan, 2014c). While "spreading propaganda" and "disturbing public order" are expressly prohibited by the Press Law, the broad nature of these prohibitions leaves judicial authorities substantial

prosecutorial discretion. The result is that censorship laws are often enforced in an ad hoc and inconsistent way.

There are two factors that compound the impression of arbitrariness in the case of Rasouli's prosecution. Firstly, she was informed of her sentence over the phone, which came after an appeal hearing at which she was forbidden to speak. Secondly, she received a much harsher sentence than fellow journalist Parastoo Dokouhaki, who was facing the same charges. Dokouhaki was sentenced to probation and a ban on all political activities (Mackey, 2014).

Iran's president, Hassan Rouhani, has spoken of the need to relax restrictions on free speech, but the country's judiciary remains dominated by conservatives who have pursued similar charges against other journalists.

Robert Mackey, New York Times (2014)

Alongside the issue of the textual ambiguity of the Constitution and Press Law, one possible explanation for such inconsistent application of the law can be found in the tensions between various factions of Iran's domestic politics. The election of the moderate Hassan Rouhani has engendered something of a backlash among Iranian conservatives, who are seeking to reassert their power through the judiciary. This illustrates another parallel to the case of the Narenji bloggers. Broadly-worded prohibitions on press freedom present censorship battles as venues for confrontation not just between the regime and the people, but also between various factions of the regime itself.

Joining the Dots

Given the history of foreign interference in Iranian society, the desire to codify into law the imperative to cultivate Iranian values as well as the responsibility to protect against the imposition of Western culture is theoretically justifiable. In practice, however, the semantic flexibility that characterises phrases such as "Islamic values" and "foreign press" leaves judicial authorities substantial discretion to prosecute journalists.

As the cases of the Narenji bloggers and Marzieh Rasouli illustrate, such discretion has led not only to the arbitrary enforcement of the law, but has also enabled various government factions to use press regulation as a pretext to augment their own power at the expense of their rivals. While the prosecution of the Narenji bloggers and Marzieh

Rasouli may have been harsh and arbitrary, they were not necessarily unconstitutional. Judicial authorities may have enforced laws in an expedient or cynical way, but, in point of fact, "spreading propaganda against the regime" and "disturbing public order" are indeed explicitly prohibited by the Press Law, which, pursuant to Article 24 of the Constitution, delineates the exceptions to the guarantee of press freedom.

The myriad issues relating to censorship in Iran, from arbitrary enforcement to judicial activism, ultimately stem from a common source — the constitution itself. The broadly-worded prohibitions against "spreading propaganda" or "creating social discord" may have been formulated in an effort to foster and preserve an authentic Iranian culture against the rapacious advance of Western values, yet in practice they have given the judiciary considerable latitude to arbitrarily determine censorship policy and to assert its institutional authority against the Rouhani administration.

Many of the issues related to Iran's press regulation policies are common to nascent nations in the Global South. The imperative of the media to support the revolution is an important part of nation-building, aiming to foment a sense of national pride and shore up support for the incipient constitutional order. However, as the new political order begins to assert itself more confidently, this approach often undermines press freedom, and can be cynically exploited to justify all sorts of censorship. The cases of the Narenji bloggers and Marzieh Rasouli clearly illustrate this risk.

The Islamic Republic is still relatively young and we may see changes in various aspects of media policy as it continues to develop. However, it will be difficult to satisfactorily resolve the censorship issues illustrated in this chapter so long as the current constitutional settlement remains in place, plagued as it is by textual ambiguity and an inherent vulnerability to the whims of Iran's conservative religious judiciary. \Diamond

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