



The Relationship between Sharia and the Unwritten Constitution; with a Glance at the Opinions of the Guardian Council

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Abstract

Introduction

The approval and commitment to the Constitution are fundamental features of the modern state and outstanding achievements of human civilization. This commitment emphasizes the responsibility of the state to safeguard and protect the order based on the Constitution. It also highlights the importance of all government elements supporting the Constitution. Nonetheless, the concept of Sharia's supremacy over the law, the incorporation of the Constitution within the boundaries of Sharia, and the Constitution's commitment to Sharia's principles and rulings place Sharia in the position of an uncodified and unwritten version of the Constitution in certain Islamic contexts, particularly within the constitutional law system of the Islamic Republic of Iran. Therefore, certain basic norms, whether written in the text of the Constitution or serving as an unwritten spirit, govern the written text and cannot be violated. These norms form the foundation of the constitutional document.

Given the significance of *ijtihad* and the need for interpretation and decision-making based on the requirements of time and place, Sharia law, as a guiding principle for a developing nation and a changing world, should always be interpreted in a manner that preserves its relevance over time. This should be done while upholding the stability of fundamental and unalterable principles. Moreover, it is important to note that the Guardian Council, which serves as both an interpreter and protector of the Constitution and Sharia, is not strictly bound by the written document in its actions. Its role is to safeguard the Sharia and ensure that all laws and regulations conform to it. In order to achieve this, the Council may rely on its understanding and inference of the Sharia and its rules, even if there is no explicit basis for it in the text of the Constitution. This being said, it is crucial to explore the essence of Sharia law and its influence on the Islamic



legal system, specifically within the constitutional law framework of Iran.

By adopting a descriptive-analytical research method and a comparative approach, this article aims to clarify the relationship between Sharia and the unwritten Constitution so as to achieve a better understanding of the constitutional rights system in the Islamic state of Iran. The purpose of this research is to address the fundamental question of the relationship between the unwritten Constitution and the protection of Sharia, as well as how these two concepts, namely the unwritten Constitution and Sharia, are interconnected.

Although the concept of Sharia and its various rulings have been extensively studied by researchers, there has been a notable absence of research specifically examining the notion of Sharia being unwritten and its correlation with unwritten constitutional rights.

Research Methodology

The collection of materials in the present research involved conducting library research and taking notes. The author studied Persian and English sources, read available books and articles, and examined the interpretation and advisory opinions of the Guardian Council to explain and analyze the relationship between Sharia and the unwritten Constitution using a descriptive-analytical approach.

Findings and conclusions

This article concludes that despite the comprehensiveness of Islam and the holy Qur'an's textual authority, the state's political aspects and theories of fundamental rights lack a written and specific basis in the Qur'an and the Sunnah. Therefore, instead of a set of uniform and codified laws, which are considered the main characteristics of the written law, Sharia is essentially more akin to a dynamic and uncodified discourse concerning the exploration of ideas for the betterment of society through reason and *ijtihad*. Sharia refers to the collection of metatextual truths that form the foundation of the Islamic constitutional system. It represents the ruling spirit of the Constitution, and the principles outlined in the Constitution derive their authority from this supreme metatextual source. The unwritten nature of Sharia is a recent manifestation of the norms that are essential for the history, identity, values, and legal system of a Muslim nation. As a result, Sharia, although possessing an unwritten nature, can serve as a foundation for uncovering or even establishing unwritten norms within the text of the Constitution by offering a broad platform for interpretation.

Considering the ultimate goal of Sharia, which is expediency and the pursuit of absolute good, and the mission of the Constitution, which is to regulate power and ensure the protection of people's rights and freedoms, it is important to exercise caution when interpreting, implementing, or carrying out governmental procedures within the framework of the Constitution. This is to ensure that the unspoken realm of Sharia, its commitment to justice, and human involvement in the interpretation process align with the evolving aspects of constitutionalism and positive societal changes. In this regard, it appears that Iran's basic jurisprudence needs to provide further justification for its positions compared to other authorities. This is particularly important when considering its metatextual approaches in aligning approvals with Sharia law. It is important to note



that the jurists of the Guardian Council are Sharia monitors rather than constitutional reformers.

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Conflict of interest

The authors declared no conflict of interest.

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