Freedom of Conscience by Dr. Abdol-Karim Lahidji

Abstract
Dr. Abdol-Karim Lahidji examines the implications of the Article 18 of the Universal Declaration, what it should mean and how it relates to other international protections on freedom of conscience and belief. He argues that Iran is still bound by commitments it made in 1975 but that the current constitution ignores this and is, therefore, discriminatory. He questions the ability of other Islamic schools to manifest or promote their religion, while noting that the three ‘protected’ minorities explicitly cannot. All other faiths have no protections or status and Muslims are prevented from changing faiths under punishment of death. Lahidji refers to the 1995 report of the UN Special Rapporteur on freedom of religion arguing that his concerns have not been resolved in the subsequent 15 years.

Biography
Dr. Abdol-Karim Lahidji received his doctorate in legal studies from Tehran University in 1965. His interest in human rights advocacy began in high school and intensified while he was attending law school. In 1977, he established the Iranian Association of Jurists (IAJ) and the Iranian Association for Liberty and Human Rights (IALHR) with the purpose of promoting the Universal Declaration of Human Rights in the society at large. After the Revolution, he was among the first ones to condemn the executions and other violations of human rights by the new regime. Exiled in France in 1982, Dr. Lahidji established the League for the Defence of Human Rights in Iran (LDDHI) in order to expose the Islamic Republic’s human rights record. In 1984, LDDHI joined the Europe based International Federation for Human Rights (FIDH) where he has been elected vice-president for five consecutive terms. Addressing a variety of human rights and legal issues, Dr. Lahidji has lectured at dozens of universities and civic associations throughout Europe and North America and has written three books and more than a hundred articles for a number of Persian publications and web sites in exile. In 1990, Dr. Lahidji was the recipient of Human Rights Watch award for outstanding monitors of human rights in the world.

Freedom of Conscience
The primary definition of conscience is a human being’s awareness and understanding of his or her self. The definition of freedom of conscience, however, is freedom of thought, belief and religion. This concept has been delineated in Article 18 of the Universal Declaration of Human Rights: “Everyone has the right to freedom of thought, conscience and religion.” This Article then cites examples of these freedoms. Among them are the freedom to change one’s religion and the freedom to manifest one’s religion. The way in which one should be able to manifest his or her religion is also explained: “[E]ither alone or in community with others and in public or private” and “in teaching, practice, worship and observance.”

No detail has been left out in defining this right. A human’s thought, belief and religion are respected as matters dealing with conscience and spirit, and they are protected against any infringement or violation. The tragic experience of religious and sectarian warfare had an impact on the minds of the declaration’s drafters, and, as a result, they have repeatedly mentioned belief and conviction in addition to religion. They do not discuss freedom of opinion in this Article. Freedom of opinion and expression are mentioned in Article 19. Article 18, however, goes beyond freedom of opinion and discusses thought, belief, conviction and conscience. In addition to religion, it always mentions the term “belief” in order to leave no room for misinterpretation or misuse. This is because belief is broader than religion. Belief may be materialised in a religious context, but not every belief is considered religion. For instance, opposition to war may have different ideological, philosophical,
religious or political reasons. Yet, some anti-war individuals are considered conscientious objectors. This term refers to individuals who, based on their own beliefs, consider human life above everything else. They do not go to fight on the front line during times of war, nor do they perform military service in peacetime. They maintain that their beliefs and their consciences do not allow them to kill another person, and that they cannot prepare themselves for war and bloodshed. Some of them may have religious faith too. Yet, they consider their belief a matter of conscience separate from or above their religion.

In Article 18 of the International Covenant on Civil and Political Rights, freedom of thought, conscience, religion and belief are mentioned. This phrase is added next: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

The Universal Declaration of Human Rights was passed by the UN General Assembly in 1948. The International Covenant on Civil and Political Rights was passed by the General Assembly in 1966, but it went into effect on March 24, 1976. Yet religious discrimination and belief-based legal inequality were so widespread that the UN General Assembly passed the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief on November 25, 1981.

In Article 1 of this Declaration, freedom of thought, conscience and religion are mentioned together yet again. However, in order to prevent misgivings about the definition of religion and to negate the idea that religion should be differentiated from other sorts of belief, Article 1 states, “[T]his right shall include freedom to have a religion or whatever belief of his choice.”

In Article 2 of the Declaration, any exclusion, restriction, distinction or preference associated with human rights or political freedoms that is based on religion or another belief system is considered an example of intolerance and discrimination. In Article 3, legal discrimination based on religion or belief is considered an affront to human dignity and the fundamental freedoms proclaimed in the Universal Declaration of Human Rights, Charter of the United Nations and international human rights covenants. It is also considered the largest obstacle to the formation of peaceful and friendly relations between nations.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were ratified by the Iranian parliament in 1975. Since then Iran has been considered party to both covenants. According to the principles of international law, unless a state formally withdraws from a treaty, that state is responsible before the international community for enforcing the international treaties to which it is party. Joining international human rights treaties such as international human rights covenants obliges conformity of that country’s constitution and laws to the terms of those covenants, and it mandates the recognition and observance of the rights and political freedoms of all of that country’s citizens.

The Constitution of the Islamic Republic of Iran does not recognise human rights or fundamental freedoms according to international human rights covenants. Human rights are based on legal equality regardless of religion, race, sex, colour, belief and social and economic status, among other things. The Islamic Republic’s Constitution, however, is discriminatory. The rights of non-Muslims are not equal to those of Muslims, nor are the rights of women equal to those of men. Also, the rights of lay people are not equal to those of (high-level) clerics. Neither freedom of conscience nor freedom of religion is mentioned. Article 12 of the Islamic Republic Constitution declares Iran’s official religion to be Twelve Ja’fari Shi’a. This Article addresses the followers of other Islamic sects with this phrase: “They are free to perform their religious rites according to their religious jurisprudence.” Yet, the right to manifest one’s religion, either in private or public, is not mentioned. Can a Sunni Iranian publicly promote his or her religion and speak of Abu Bakr and Umar’s legitimacy? Article 13
exclusively mentions three religious minorities by stating: “They are free to exercise their religion within the legal framework.” These three minorities do not have the right to manifest or promote their religion. Evangelical priests who were abducted and murdered were not guilty of anything but promoting their religion. Limiting the title of “recognised minority” to Zoroastrians, Jews and Christians has created a social problem out of the situation of the followers of other religions and creeds. Thousands of Iranians live in a legal vacuum. A Bahá’í is not only deprived of political and social rights, but he or she is also denied civil rights and freedoms, unless he or she hides his or her faith. Sabian Iranians and followers of other faiths are in the same situation. Iran’s civil law, and family law in particular, are derived from Shi’a jurisprudence. Therefore, the adherents of other Islamic sects, as well as the three recognised minorities, are subject to their own religious laws in personal affairs such as marriage, divorce, inheritance and wills. But what is the status of the adherents of unrecognised religions? They must either falsely introduce themselves as Muslims or they will be denied their civil rights and liberties.

The right to study in schools and universities, the right to be employed at governmental agencies and many other rights and freedoms are similarly affected. It is interesting to note that Article 14 states that the government of the Islamic Republic and Muslims are required to treat non-Muslims fairly in accordance with Islamic justice, and to observe their human rights. But these vague concepts have never been defined, and they have not, in practice, led to observance of the rights of non-Muslims.

Furthermore, the freedom to change one’s religion is not recognised for Iranian Muslims. In fact, it is punishable by death. When non-Muslims convert to Islam, however, they will be granted more rights. In effect, instead of existence of freedom of belief and religion, enjoyment of rights and freedoms has become a function of religious belief.

As a result, the Constitution of the Islamic Republic and the actions of the Iranian government are in no way in conformity with universal norms of human rights, including the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Since the UN General Assembly had declared its strong determination to adopt necessary measures towards the elimination of all sorts of discrimination based on religion or belief, the Human Rights Commission selected a Special Rapporteur to investigate and report on the status of freedom of religion and belief in Iran. The Rapporteur was from Tunisia, a Muslim country. Abdelfattah Amor came to Iran in December 1995. Two months later, he presented his report to the Human Rights Commission. After 15 years, this report is still relevant because no changes have taken place regarding freedom of conscience in the Islamic Republic, whether in the legislative arena or in practice.

Abdelfattah Amor distinguishes religious government from state religion: “[A] State religion is not, in itself, in contradiction with human rights. However, this state of affairs - which is consecrated by the Iranian Constitution - should not be exploited at the expense of the rights of minorities and the rights associated with citizenship, which imply that citizens should not be discriminated against on grounds such as, inter alia, religion or belief. From this standpoint, the concept of Islamic criteria as set forth in Article 4 of the Constitution should be precisely defined in regulations or legal texts without, however, giving rise to discrimination among citizens.”

According to Article 4, “all civil, penal, financial, economic, administrative, cultural laws and regulations, among others, should be based on Islamic criteria.” The term “Islamic criteria” is not defined in the Constitution or any other law. This Article only states, “The power to settle this issue is vested in the Guardian Council’s religious jurists.” The Guardian Council is comprised of six Shi’a jurists who believe in the Guardianship of the Jurist, and who are appointed by the Islamic Republic’s
Supreme Leader. Guardian Council decisions are made by majority vote. Therefore, four religious jurists can void laws passed by the parliament on the grounds of nonconformity with “Islamic criteria.”

It should be noted that in addition to Article 4, this term has been repeatedly mentioned in the Third Chapter of the Constitution, which discusses the “rights of the people,” (see Articles 20, 21, 24, 26, 27 and 28). The rights and freedoms of the people are recognised within the framework of “Islamic criteria.” Therefore, the fatwas and opinions of Shi’a jurists have cast a shadow on all Iranian laws, and in many instances they have become law themselves. Among such instances are penal laws and concepts such as Qisas, Hadd (fixed punishment), Ta’zir (discretionary punishment), Blood Money, Mohareb (one who wages war against God), Corrupt on Earth, and cruel punishments such as stoning, crucifying, amputating and lashing. It is clear that this legal and penal system rules over all Iranian people whether they are Shi’a, non-Shi’a, Muslim or non-Muslim.

An historical irony is that in religious governments, in addition to freedom of thought, the religious freedoms of adherents of faiths other than the state religion have been subject to more discrimination, infringement and oppression compared to any other time.

Abdelfattah Amor portrays a regrettable picture of the situation of religious minorities, especially the Bahá’ís. Due to a religious government and lack of tolerance and equal rights, the Bahá’ís are increasingly feeling like foreigners in their own country. Very many have been forced to leave their homeland. A recent example of persecution is the 10-year sentence imposed on seven Bahá’i administrators in Iran, which was handed down a few weeks ago after two years of imprisonment and a show trial behind the closed doors of the Revolutionary Court.

A last word to Iran’s leaders and others is that human rights and fundamental freedoms such as freedom of conscience are universal and beyond nationality or religion. The discourse about the conformity or non-conformity of human rights with Islam or other religions is an interesting topic for theoretical and academic debates. Yet, these debates have no place in actions of governments, whether religious or secular, in relation to their international obligations regarding human rights. It is the religious government that should conform its actions and words to human rights principles. It should stop egregious violation of human rights and end denial of people’s freedoms, such as the freedom of conscience and freedom of religion.