

**THE ISLAMIC LEGISLATIVE POWER
WITH REFERENCE TO THE
IRANIAN EXPERIENCE**

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Abstract

Islam comprises a systematic and coherent legislative power. The *Quran* and the *Sunna (Sharia)* together establish the **Primary** sources of law in Islam. The **Secondary** sources lend themselves to debates and arguments among Islamic scholars. The most important secondary sources are *ijma*, *qiyas*, *aql* and *ijtihad*.

Allah (the creator) is recognized as the supreme lawgiver in Islam. The holy Prophet, as the messenger and the Leader of the Islamic community, ranks the second main lawgiver who communicated the revelation to the Muslims and regulated the affairs of the Islamic society. The *Sharia*, created by *Allah* and conveyed by the Prophet, is immutable and eternal. Where there is no explicit law (*Mantaqah-al-Feraq*) in *Sharia*, legislation has been permissible and necessary. For this purpose and in order to meet the ever-changing requirements of society, the example set by the Prophet in the use of consultation led to the eventual recognition of two other lawgivers recognized as the *foqaha* and the Consultative Assembly (*Majlis-al-Shura*).

As will be discussed, the method of consultation, its continuation and extension as demonstrated and exemplified by the Prophet, has been the prerequisite for today's Islamic society and era, and has led to the establishment of the Consultative Assembly (*Majlis-al-Shura*). *Foqaha* are to reach and discern an understanding of the *Sharia*. Whereas *Majlis-al-Shura* deals with the

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more complicated daily problems and needs of society and such policy-making issues requiring the special skills of experts, not specified in the *Sharia*. It will be determined how such legislative authorities provide the Islamic legislative system with a dynamic capability.

Islamic system approves of the principle of the separation of powers and recommends the implementation of this principle as a guarantee for the realization of democracy. The opposition of Islam to any centralization of power leading to despotism and tyranny will be a matter for discussion.

It will be subsequently discussed that the Islamic Republic of Iran can be taken as a prototype of an Islamic legislative system. Iran's Islamic Consultative Assembly (the *Majlis*) is the central body for formulating and passing laws, and as it will be argued, the nature of law-making in Iran is not in contrast with that of the West. The only difference is that in the West the principles of the Constitution solely are observed, whereas in Iran, the Islamic principles have an equal place in addition to compliance with the Constitution. To serve this dual role, two further institutions – namely the Council of Guardians and the Expediency Council– have been established to supplement the functions of the Islamic Consultative Assembly.