Mirza Salih Shirazi and his Safarnāmeh as a Case Study for a Legal-Governance Translation into Persian

*(Observations and Translations of a 19th Century Iranian Traveling Scholar on the Parliamentarism, Rule of Law and Governance in Britain)*

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Outline

Mirza Saleh is among those earliest travelers from the Middle East who consciously met and experienced the “new West” by early 19th Century (the Qajar era), in the throes of the Industrial Revolution and Enlightenment. He arrived London via Caucasus region/Russia in 1815 and remained for over three and half years while in this time he became the first Iranian student to attend Oxford. As he himself indicates along with four other students, he “was dispatched on an educational and fact-finding mission to learn about the progress being made in Europe at the time, with an emphasis on their science, philosophy, languages, religion and law.” His observations are extensively about Britain-London especially- in the process of rapid modernization, what was interesting or different from the point of view of an influential Iranian scholar. Impressed by British political, legal and educational progress and order, with a good knowledge of modern history of Europe he described various aspects of the political culture in Britain with a clear intention to motivate the Iranian audience. In this panel I would like to present the results of my research on the role of Mirza Saleh Shirazi (1790-1845), particularly his Safarnāmeh (Travelogues), on understandings and cultural translations in Iran during 19 the Century. My focus in this discussion is on some key legal and political observation and translations, (such as hurriat/freedom, access to justice/adalat and vakalat/legal representation) offered by Safarnāmeh to the Iranian public. I will then explore on the hermeneutical and discursive impacts of these translations on the early development of modern legal, political, educational and political debates in Iran. I will conclude on the role of Safarnāmeh on the Iranian discourses on freedom and rule of law reaching to the historical point of the Constitutional Revolution of 1905.

1. A Brief History of Mirza Saleh’s Travel to England

Experiencing the “modern West” through a humiliating devastating war (i.e. the Perso-Russian War of 1804-13) pushed the Iranian Qajar Rulers, understanding the throne/absolute monarchy
as a Shar'i/divine right, to urgently seek knowing this “new” World/ tajadod appearing outside the western borders of Iran and Ottoman Empire. Mirza Saleh Shirazi, as an early traveler to the Europe -was a member of what is known as ‘the first caravan of knowledge’. We can also call it the first caravan of Persian elites who were tasked to witness the Europe and translate legal and political culture and institutions to Iranians. Their memoirs and reports on the nature of modern law and government in Europe was attractive for many statesmen in the court of Shah who were feeling deeply confused by the sources of the new order/power in the West, especially about the type of governance and industry of Britain which was already present in the region. Safarnāmeh was among key Qajar texts that was able to provide some new terms and narratives to reduce this epistemic confusion about the “modern” in Iran and helping the society to engaging more intellectually with the present West. Mirza Saleh’e descriptions of Britain progressive and democratic system of 19th century was deliberately relating the past (monarchic-arbitrary-Islamic past) to the progressive changing present Europe that can also open some new horizons for the prosperity of Iranian nation tomorrow.

Mirza Saleh was personally selected by the Crown Prince to go to Britain and report on the changes there. In April 1815, when Abbas Mirza, the Crown Prince of Persia (Nayeb Al-saltaneh) decided to send the first five young people to England to study new science and technology, Mirza Saleh, although an elder in that team, was a respected court stateman and intellectual was the first in the 5-members list to get selected to head to the Britain. Therefore, Safarnāmeh of Mirza Saleh can be considered as a first paradigmatic piece of Qajar travel writings by the beginning aimed to “translate” the new political and industrial culture to Iranians. Safaranameh is not just a daily journal. It contains a conscious and systematic attempt at a political historiography of Britain.

Knowing some good English even before travel, Mirza Saleh was tasked by the prince to study key languages of the West (English, French, Latin), natural sciences as well as history and literature. In Safarnāmeh, stating his memories of before traveling, he reveals that he was not only enthusiastic to learn about foreign science and languages, but also wanted to know about their religion and law.

Before traveling to England, Mirza Saleh was the special assistance to Colonel Darcy (1780-1848), who was one of a group of British officers and enlisted men came to Iran in 1811 to reform and equip the Iranian army. It does worth mentioning that the mid- 19th century is the time of introducing Freemasonry lodges with their universal liberal ideas to Iran, as well as the Ottoman Empire and Egypt. Mirza Saleh is regarded as early Freemasons of Iran. In his memoirs he records the initiation that took place on 4 November 1818, and he appears to have taken his Masonic vows seriously, for he offers few details of the ceremony: “to write more concerning this matter is not permissible”. There is no exaggeration if one says that Freemasonry associations that were able to recruit more than three hundred members, primarily court and government officials have effectively promoted the cause of constitutionalism and modern state building in Iran. Many of Freemasons were connected to the Constitutional movement of 1905-9.
2. Some examples from Safarnāmeh

To explore about the quality of Mirza Saleh’s narrative on the British governance system and the intentional elements he chose for the Iranian addresses, let’s read how Mirza explains the British Museum- as an example:

“in London there is a house named ‘the British Museum.’ it’s an expansive and regal house that first belonged to Duke Montagu and was rendered a museum in 1753. Henri [sic] Salone Baronet, the royal physician, had a museum –that is, a collection of the marvels of the land and the sea as well as various subterranean elements that are worth one hundred thousand British tomans. He had willed his collection for the British nation. It’s been placed in the British Museum for all to see. The parliament, that is mashverat khane-ye Engeliizi, ‘the British house of council,’ allocated one hundred thousand tomans to complete the museum and display the marvels for the people of the city.”

Consciously, in the above-mentioned phrase, Mirza Saleh refers to the logic of the establishing a museum and what has to do with the modern governance in Britain (both legislative and executive branches), as well as the education of the British public, and their freedoms.

Safarnāmeh introduced some new key terms (like as freedom/hurriat, order/nezām, justice/adālat) to the old Iranian political culture which later became transformational words for reformers and rethinkers, whether in the court of Shah and governmental bureaucracy or intellectuals, progressive clerics and the educated peoples all over Iran- some of which subsequently repeatedly used in the constitutional, Islamic Law and political debates of the 1906 Constitutional Revolution. Through the analysis of his text, we can see how translation enters the epistemic shifts of Iranian political and religious culture that constitutes ‘the modern’ in Iran. Moreover, we can see the contribution of translation to the expansion of potentialities and possibilities of concepts and their transformations. The popularity of the narratives of Mirza Saleh from the new West touched the limits of prevailing legal culture and governmental aspirations, practices and debates in 19th century Iran. This analysis shows that in Iran the work of Mirza Saleh as an early traveler, as a translation of the British modernity, emerges as a historical and cultural practice that reaches beyond the linguistic transposition of texts and concerns the potentiality of linguistic and cultural traditions to open themselves to new horizons of meanings in political life. This type of cultural exchange highlights some solid differences between “us” and “them” and thereby facilitates gradual emergence of a sort of national self-awareness about our being in the new world order. The unprecedented debates on the values of rule of law and constitutionalism in Iran prior to the Constitutional Revolution, both from a nationalistic perspective and a Shia-Islamic legal tradition perspective, shows the epistemological aspects of changes that not only helped the renewal of public sphere in Shi’a legal tradition but also , in its turn, strongly contributed to the Revolution of 1906.
In Mirza Saleh’s eyes, the British systemic combination of freedom and order was so noteworthy that he describes it as the reason for devoting nearly one third of Safarnāmeh to explain that model and how it functions:

“a country with this kind of security and freedom is called the land of freedom. in freedom, there is an order! The king and the homeless both consent to this order and respect it; whichever disrespect this order will be subject to punishment.”

It seems the modern concept of hurriyat/‘freedom’, a key component of modern liberal political thought and legal practice, attracts Mirza’s attention before everything else. In description of many places he utilizes the term of ‘freedom’, such as the freedom of the public to visit the museum, to use the British library; of the jury to decide on guilt or innocence in a trial; of men – and only men at this point – to choose parliamentary representatives; and of the parliament to refuse funding for a war decided upon by the British monarch and thus effectively placing a limit on his sovereignty. Freedom, he writes, protects men, however poor they might be, from the will of the sovereign. His description makes clear that freedom, defined independently from the sovereign right of the king, does not mean lack of order. Mirza Saleh, as an established court statement in the arbitrary rule of Qajars modeled after classical Shia jurisprudence, known very well the differences when he refers to the British legal culture and judicial system that safeguards the modern ‘freedom’. “British judges cannot deliver a fatwa”, he writes, because “judgment belongs to the reasoning of the twelve sworn men who witness the procession of the trial.”

The extensive reference to the Sharia fatwa system in describing legal-judicial cultures of Britain and then France in Misrza’s Safarnāmeh, has resulted in two different explanations about the level of knowledge of Mirza Saleh. Based on the subjective judgment of the translator/Mirza Saleh they say his understanding were of ‘ignorance’, ‘mistakes’ or ‘superficial understanding’. While there are other researchers who believes these are result of an ‘epistemic confusion’ which is not a ‘mistake’ in translation or the lack of a translator’s lucidity or rigor. it does not entail collapsing the difference between European traditions, on the one hand, and Iranian and Islamic ones on the other. epistemic confusion is the mark of an Iranian historical and cultural state as it emerges in the writing of Mirza Saleh. it reveals the emergence of a historical rupture in the Iranian order of things and the formation of nascent historical discourses. epistemic confusion is the mirror of the historical crises that propelled the Iranian translation effort underway and engendered innovations such as the constitutional revolution.

3. The importance of early reporting on the new forms and terms/“the Modern” for the Constitutional Revolution of 1905

Tracing some fundamental changes in the language and practice of politics around the 1906 Iranian Constitutional Revolution, it will be acceptable to consider Safarnāmeh as a paradigmatic text of Qajar time in the frontline of Iranian understandings of the new Age with its new social, cultural, legal and political forms. These new forms and terms that were perfectly narrated and translated by Mirza Saleh targeting the thirst of Persian audience for the NEW was clearly provoking a sort of deep frustration from the old order of things in Iran. Some historians
argue that due to the raising enthusiastic readers, especially within the royal court, to know about the new West, Mirza Saleh’s Safarnāmeh projecting a domestically shaped utopia onto the "West,". was impressive because it was written from an Iranian eye. It was very attractive because the reader could easily find the lines of difference between the new West and what was internal to Iranian cultural legal and political traditions. Safarnāmeh with a culmination of a narrative of history of progress in Britain has certainly contributed to the formation of Iranians’ early knowledge about the new Age/modernity. The easy access to justice for everyone was among attractive phenomena which Shirazi vastly admired. He mentions that the progress of clearing Regent’s Street was held up by a solitary old shop-owner who refused to sell up, saying that “The whole army would not be allowed to move him.” These legal rights, he felt, were unique in the world, and had been won “after years of war and struggle.”

Mirza Saleh introduced not only the technique of modern journalism to Iran through his short-lived Aḵbār (also known as Kāḡaḏ-e aḵbār) that had begun as a private venture under the supervision of Mirzā Ṣāleḥ Širāzi in May 1837, he also was an avant-garde in presenting the British governance system in Persian and hereby effectively contributed to the key terms of the Iranian Constitutionalism/the Constitutional Revolution of 1906. Mirza Saleh later established Iran’s first newspaper and negotiated Iran’s fate with Russia as a key translator and diplomat of the court.

In Mirza Saleh’s text and professional work in the court of Shah as translator and negotiator we can see how his knowledge of foreign language and his translations from Britain contributed to the realization of “crisis” in Iranian governance and law.

4. Entering the new time by printing house of Mirza Saleh

It is a matter of relative consensus in Iranian modern studies that it was in the aftermath of deep sufferings from two defeated wars with Russia (The First War 1804-13 and the second was 1826-28), the seeds of modern Iranian intellectualism were simultaneously planted. Therefore, Perso-Russian wars are usually regarded as the marker of entering the new Asr/Era in Iran. Maybe it is also correct to say that first printing machine of Mirza Saleh was the required machinery for this gradual travel to the new time. This time has been also marked as “the time of translation,” where the attempt to sort out differences with the West – both literally and intellectually – prompts national consciousness and new forms of self-awareness versus the industrial and progressive West.

Mirza Saleh was the first Iranian who brought a printing machine to Iran. He established the first modern printing house in Tabriz, which was then moved to Tehran, and published the first ever newspaper/Kaghaz Akbar (KA) inside Iran. He also published the first Farsi translation of Koran in Iran. The publication of KA continued for around three years on a monthly issuance. First issue was published on 1 May 1837. The KA had two pages: first page contained the news of the East, second was the news from the Western countries.
After the short-lived KA, the first official newspaper of the state of Iran was published on 7 February 1851 on the orders of the first prime minister under Nāṣer-al-Din Shah’s rule, Mirzā Taqi Khan Amir Kabir (Mirzā Ṣāleḥ Širāzi, p. 21). This was the weekly Waqāyeʿ-ettefāqiya which was published regularly as the only official gazette of the country for 471 issues in the course of ten years. Evidence suggests that it had been inspired by the Ottoman official gazette, Takvim-i vekayi (first published in 1831), and like its counterpart it was more of an official bulletin, reporting the goings-on at court, than a newspaper in the modern sense.

5. Military Reforms requiring the Governance Reform

Many royals and elites, particularly Abbas Mirza, his advisers, and his officials laid foundations on which the later reformers could build. In Tabriz geographically the closest place to the West, they began with the sense of the necessity of military reform initially. They got the urgency of a nezām-e jaḏīd for the reform Iranian army along European lines. Iran found itself in a predicament similar to that which had faced the Ottoman empire since the early 18th century. Under ʿAbbās Mīrzā, (1789-1833) who was personally behind sending Mirza Saleh to UK was largely in this type of thoughts. Thanks to its geographical position and the political situation, Tabriz became the gateway for entry of modern influences. Above all, after the establishment of diplomatic relations with Great Britain in Tabriz, the crown prince became deeply receptive to English influences. Western ideas entered first via Turkey and Russia, later through the French and British embassies in Azerbaijan. ʿAbbās Mīrzā seized on these eagerly and turned Tabrīz into the “focal point of the westernization of his country”. He was conversant with European history with a military perspective. The view to the governance reform came as a result of that need assessment when peoples like Mirza Saleh returned home: when in 17th-18th Centuries the Ottoman and Iranian empires confront the new West through their wars…They first came to the idea how to build their new armies by borrowing from the West. Abbas Mirza, however, could not grasp this imperative that a radical military reform can succeed only if Iran’s governance model is substantially revised.

Debates and infighting over military reform placed at the very core of Iran’s politics of 18th Century. This is not surprising given the tremendous role the military establishment has played throughout Qajar era, especially during the rule of the Crown Prince Abbas Mirza. Obviously, these wars had broad political, economic, social, and foreign policy implications on Iranians.

6. Law and Governance during the Qājār Period

The time of Mirza Salih was living at the time of the shahs of the Qājār, a Turkmen tribe, were among the most incompetent pre-modern rulers of Iran. Their relatively long rule (r.1785–1925) coincided with industrialization and the advent of modern legal systems based on the rule of law in the west.
The shahs of the Qājār, a Turkmen tribe, were among the most incompetent pre-modern rulers of Iran. Their relatively long rule (r.1785–1925) coincided with industrialization and the advent of modern legal systems based on the rule of law in the west. A weak and chaotic statehood paved the way for the greater authority of Shiʿī religious leaders (mujtahids), provincial and local governors, large landlords and tribal leaders. The increasing power of mujtahids in the public sphere, which was linked to the bazaar and landlords, was particularly evident. With established material, educational and anti-foreign backgrounds, they were a highly self-conscious and coordinated non-governmental force. Unlike the Šafavids, the weak and bankrupt Qājār rulers had no credible claims on religious authority of their own. They therefore facilitated the involvement of mujtahids not only in the judicial domain, which had been their classical domain, but in social, political and even military affairs as well.

This era was partly shaped by the growth of the rationalist Shiʿī jurists movement (usūlis), led by the great scholar Muḥamad Baqir Bihbahani (d.1792). They defeated the akhbārīs, who advocated a type of Islamic Shiʿī thought that was similar to the salafi movement in sunnism and which remained dominant in most Shiʿī seminaries. The most significant practical impact of the hegemony of the usūlis over the akhbārīes was the tremendous authority and power it vested in the intervention of mujtahids in public affairs. Consequently, the role of the mujtahids began to expand into areas such as dealing with violent conflicts and foreign relations that had formerly been within the king’s court.

In the Qājār period, however, a form of customary law (qavānin-ʿurfī) that was administered by state courthouses called divān khāneh existed but it was dominated by Sharīʿah rule under a credible mujtahid. There was a murky division of jurisdiction between Sharīʿah and the state courts (ʿurfī). The rulings of state courthouses were usually enforced by traditional police (darūgheh). The Shah appointed and dismissed judges in the central courts, while provincial and local governors did so in their own regions. Like the other parts of state apparatus, ʿurfī courts administered by governmental judges were left extremely underdeveloped, and in most parts of the country there was no official state judicial organ. The Shiʿī clerics, with their exclusive public resources, became more independent and dealt with judicial and criminal policies at their discretion without state oversight. With the exception of exceptional circumstances in which a case interfered with security and discipline, the governmental courts and secular judicial authorities remained under the influence of Shiʿī mujtahids. If an accused or bankrupt person could access a religious authority in his house, his mosques or places known as dār al-qazā (the house of Sharīʿah justice), they could thus escape state prosecution and its customary punishments.

The expanded power of the Sharīʿah judges, particularly in the provinces and districts, was such that the state-appointed judges hesitated to name their judgments as verdict (hokm). They called them as reports (gozārish) to the minister of justice. The weakness of state justice and the growing interference of Shiʿī clerics in judicial affairs had other consequences as well. It is widely reported that the increasing involvement of mujtahids in judicial issues was a source of judicial anarchy. The Sharīʿah judges issued contradictory verdicts on common topics, and there was no official organ to enforce their sentences. The rejection of res judicata in Shiʿīte
jurisprudence opened the way for the unlimited review and reversal of decisions of one particular mujtahid by another. In this context, it was natural, if humiliating, to give capitulatory rights to Russians after Russia imposed the Turkmenchai treaty on Iran in 1828, and then later to British, French, Belgian, and other European citizens.

Meanwhile, in the time of Nasser al-Dīn Shah (r.1848-1896), the gradual acquaintance with European legal and judicial systems added to the frustration of many of the intelligentsia. The Shah’s enthusiasm for a defensive program of modernization, due to direct contact with modern Europe, can be regarded as an initial turning point for the development of an Iranian legal culture. At the beginning, the rowshanfekrān (enlightened thinkers) or intelligenstia requested that the Shah establish a modern judiciary and parliament. The Shah, apparently aware and fearful of real reform, was not interested in making any fundamental changes. The modernization of the Iranian state, which was mainly proposed by Amirkabīr (1848-1851) – the prime minister known as the Bismarck of Iran – was slowly shifted. Dar al-Fonūn (the House of Sciences), the first modern institution of higher education, was inaugurated in 1852. The first group of Iranian law students were sent to Paris and the waning of divān-khaneh-i ‘adalat or the mazālem courts was nominally revived. By promoting state control over arbitrary state courts and reducing the power of the clergy, Amirkabir sought to institute structural reforms in the judiciary. He abolished the harsh and cruel punishments of governmental rulers such as blinding, execution by cannon, burying people alive and placing them alive in a wall, and he issued a decree on the prohibition of torture in the Iranian judiciary. But Amirkabirs statehood was short-lived and his initiatives thus mostly abortive.

Under the pressure of the intelligenstia and inspired by his European travels, Nasser al-Dīn Shah himself also initiated and decreed reform proposals. In 1870s, following in the path of Amirkabir, he decreed that the old informal divān-khaneh become the ministry of justice, and the system of “justice boxes” should report injustices to the court organized in urban centers. He also promoted some primary codifications and the formation of the first modern police force called Nazmiyeh, with 394 officers in Tehran. This was one outcome of the Shah’s second journey to Europe. In 1879, he appointed Count Antoine de Montfort, an Austrian-Italian police advisor, to the post of chief of police of Tehran. Witnessing the lack of modern laws, Count de Montfort immediately drafted a criminal and police law called the “Legal Treatise of Count” that is now regarded as the first codified criminal law of Iran. Another of Nasser al-Dīn Shah’s interesting legal reforms was the 1884 abolition of the jezyeh (poll-tax) on the Zoroastrian minority, enacted under pressure from the Parsees of Bombay. However, most of his initiatives remained unaccomplished and proved ineffective due to the lack of follow-up and political will.

In the second half of the 19th century, the establishment of constitutionalism and the rule of the modern system of law and justice became a pressing public demand in Iran. The outstanding work of Mirza Yusef Mostashar al-Dawleh, published as “One Word” in 1871, was widely received as one of most influentially enlightening works about the basics of modern rule of law written in Persian during that period. One Word, Yek Kalemeh, was a 19th-century Persian treatise that advocated the rule of law and western codified laws, was substantially inspired by the 1789 Declaration of the Rights of Man and of the Citizen. The book argued for a legal
codification based on full compatibility with the French civil code and Sharīʿah rulings. It undoubtedly had a strong influence on the constitutionalist movement. Another leading thinker and activist in this movement was Mirza Malkom Khan, publisher of the Qanūn (law) newspaper in London. Other senior Shīʿī leaders gradually joined this movement and played a significant role in the transition from the arbitrary rule of Qajars to constitutionalism.

From 1891 to 1892, Iran witnessed a nationwide Tobacco Protest Movement. It marked the first modern coalition between traditional religious authorities, bazaar merchants and secular reformers and intelligentsia, and is regarded as an introductory chapter to the Constitutional Revolution of 1905-11.

7. Constitutional Revolution Era

In 1905, Iran entered its new age with a grassroots social movement known as “the Constitutional Revolution”, which can be divided into two periods: 1905-1909 and 1909-1911. The arbitrary and degrading rule of the Qajars, combined with economic stagnation, raised public calls initially for the establishment of edālatkhāneh (a house of justice). This is regarded as an early case in the modern history of Iran, and its state and nation building. The incapability of the sick shah to perform structural reforms radicalized the situation. Protesters who took bast (sanctuary) in Tehran and Qom demanded a parliament and constitution. The revolution resulted in the Proclamation of August 5, 1906, made by Muzaffar al-Dīn Shah (r.1896-1907), which granted the right to a constitution and establishment of the first Majlis (Parliament).

The Majlis was immediately established and the first Iranian constitution was drafted on December 30, 1906. The document was influenced by the 1831 of Belgian (its principal model), 1791 French, 1876 Ottoman and 1879 Bulgarian constitutions. While it initially resembled an electoral law more than a classic constitutional text, it was later completed with a Supplement to the Constitution on October 7, 1907 (again modeled after Belgian and French codes). This text is regarded as the starting point of a modern history of law and justice in Iran. Change in the old, ineffective and decentralized justice structures of the pre-modern Iran and the process of the modernization of legal and judicial institutions is almost exclusively shaped after the constitutional revolution; it is a post-1906 phenomenon. With only minor revisions, the 1906-7 constitution remained in effect as the Iranian constitution until 1979.

The constitutional revolution was full of aspiration for the establishment of the rule of law, civil rights and modern legislation. A passionate struggle for a democratic constitutional order between modernists and conservatives begun immediately after. Within the discussions of the radical intelligentsia, however, this struggle had two sides – one that criticized the arbitrary rule of the shah and one that attacked the pre-modern thought of the clerics. Through radical debates in flowering liberal newspapers and secret associations, the intelligentsia highlighted citizen rights and notions of modern justice that affected the justice discourse of many urban Iranians. Even the wording of Hoqūq (law) was born in this era, albeit under the baton of takfīr (charged
for disbelief) from the traditional clergy as formulated by M.ʿAli Frūghī, the head of the Iranian Supreme Court in 1912. Prior to this, law was understood as only customary or religious rulings. Nevertheless, the 1907 Supplement to the Constitution was the result of a compromise between secular constitutionalists and clerics who were divided into pro and contra constitution camps. From this point onward, the dichotomy between the rule of Sharīʿah, as divinely revealed law, and positive modern law as man-made lawmaking became more public. Advocates of Sharīʿah rule considered any new legislation as a bidʿat (rejected innovation) in Islam. Ultimately, a two-tier legal system with an ambiguous civil rights structure was constituted: the first and second articles ensured the Shīʿī identity of nation and state and established preliminary foundations for secular lawmaking and a modern justice system. Article 27, although building the architecture for a modern judiciary for Iran, officially legalized the division of courts into religious and secular course (a legacy of the Ṣafavids). In this way, Sharīʿah courts obtained modern legal recognition from the constitution. Yet most clerics were not in favor of substantive judicial reforms. A conflictual dual judiciary continued (art. 71) and clerical control over legislation in the form of a veto power for a council of high ranking Shīʿī clerics (heiat-i mujtahedīn) was designed. This council of five outstanding mujtahids, as members of Majils, was established to ensure that the legislation would conform to mavāzin-i shareʿ (Islamic standards). However, this type of Islamizing mechanism did not work, and was applied only for a short period from 1909-1911.

The constitutional revolution created a new conflict within the Shīʿī school of jurisprudence, a multifaceted conflict between mashrūʿeh-khāhān (those demanding only Sharīʿah rule represented by Sheikh Fazlullah Nūri) and mashrūteh khāhān (those defending constitutionality and the necessity of Parliament represented by Akhund Khorāsānī (1839-1911) and his consultant Mirzazy-i Nāeini, the author of most authoritative treatise on constitutionalism (1860-1936)). When advocates of Sharīʿah rule found that they could not avoid parliament and its activity, they tried to draw tight limitations on any future legislation. They held the majority of seats in the newly established parliament and not only put Article 2 in the constitution but also injected many other safeguards such as articles 8, 9, 14, 15, 18, 20, 21, 27, 58, 71, and 83, and limited the authority of parliament to legislate anything against Sharīʿah criteria. Nūri was hanged for his opposition to the Constitution in 1909.

Inside the Majlis, the conflict between the clerics and seculars was intensified. As intellectual contact with the west increased, the secular parliamentarians, willingly and sometimes forcefully, accepted the western codes and legal norms and proposed them to the Majils. Reconciliation between the interests of the progressive intelligentsia and the clergy became difficult. To persuade the conservative clergy, secular parliamentarians invented different tricks; sometimes including general articles at the beginning or end of new laws and sometimes explicitly declaring new legislation as provisional. The fact was that secularists were socially forced to show their respect to holy texts and Fatwas of the clerical establishment. For instance, while the new secular penal codes of 1906, 1917 and 1927 directly aimed at transforming the foundations of existing Sharīʿah-based criminal laws in country, the first articles of the 1906 and 1926 codes and the last article of the 1917 one were all designed to satisfy clerics. With the new Majlis Commission
on Legal Reform established by Hassan Pirnia, Iranian legal experts begin translating civil, commercial, penal and procedural codes from French into Farsi.

During the course of the Constitutional Revolution, the discursive struggle over the rule of law between monarchical institutions, clerical establishments and secular reformers continued to define the limits of justice reform in Iran. It was during this debate that old words like ʿadālat (justice) acquired new meanings. The traditional understanding of ʿadālat, for instance, was an appropriate treatment that the shah or other figure of power was meant to mete out to different groups and classes in order to maintain existing social hierarchies. This term was gradually redefined to mean requesting freedom and equal justice for all irrespective of gender, ethnicity, social class and religion. In understanding criminal justice, arbitrary detentions and harsh corporal punishments and in particular mutilations were regarded as cruel and inhuman treatment. Voices rose to declare that laws should be free of discrimination and uniformly applied in different cities and towns, and that Iran should resolutely adhere to international anti-slavery conventions. However, family law – including the rights of women in marriage and divorce, inheritance, and child custody – did not develop during this time and continued to be controlled and defined primarily by clerical advocates of older concepts of justice.

The forces of the monarchy stood against the constitutional order and, in June 1908 the Majlis – the major achievement of the constitutionalist movement, was closed after a coup by the Shah, which had been assisted by the Russian Cossack Brigade. The Shah was soon deposed by revolutionaries from Tabriz and Bakhtiārī and the constitutionalists continued their rule. But with the assassination of a leading clerical figure of constitutionalism, ʿAbd Allah Bihbahānī, even those mujtahids who had been leading figures in constitutionalism and arguing for republicanism highlighted the secularist elements and begun to disassociate themselves from this modernist movement. An emerging antagonism damaged the outcomes of the constitutional movement and contributed to chaos and hardship from 1910-1920.

During the second decade of the twentieth century, secularists used the vacuum of a marginalized clergy and accelerated the process of modernization of the legal and judicial system intensified. In 1910, a modern structure of state prosecution offices was introduced, although the dual legal and judicial system (ʿurfī vs. sharʿī) was maintained. The Premier Moshīr al-Dowleh set up a new Ministry of Justice (ʿadlieh) in 1911. During the second constitutional period from 1911-1926, and with the assistance of French legal advisor Adolph Perni based in the new Justice Ministry, the process of drafting modern laws started. Avoiding conflict with clerics over their compatibility with Sharīʿah, the Majlis verbally recognized a set of Appeal Sharīʿah courts but approved two laws that are now regarded as foundations of the modern judicial system of Iran. These were the Provisional Code of Judicial Organization (qānūn-i mowaqqati-i tashkīlāt-i ʿadliyeh) and the Provisional Code of Civil Procedure (qānūn-i mowaqqati-i uṣūl-i moḥākamāt-i ḥoqūqi). Jurisdiction over family issues remained exclusively in the hands of clerics and their religious tribunals. The enactment of the Law of Registration of Deeds of May 1911 was another substantial improvement towards a modern judiciary, and severely limited the traditional role of clerics in civil issues.
Based on the Law of Principles of Organization of Judiciary, Sharīʿah tribunals and Rules of Conflict Resolution of July 1911, general and special courts were established for the first time in an organized system: general courts included a conflict resolution court, primary first-instance court and appeal court. Special courts included a commercial court, military court, special criminal tribunal and disciplinary court of judges. The new institution included the Supreme Court (the Court of Cassation/dīvān-e ʿāli-e tamīz) as well as the General Public Prosecutor. Sharīʿah courts also were recognized as part of the judiciary. A military court (dādgāh-e neẓāmī) was also created to deal with crimes committed by members of the military, as well as all political cases involving members of subversive groups and parties and those deemed to be endangering to integrity and security of the country. Under the new court system, Sharīʿah courts had to be reorganized by the state and could be recognized only if headed by a fully qualified religious scholar (mujtahid jāmʿ al-sharayet) under the Justice Ministry. Further, it was announced that these courts could not initially process cases. They were only able to initiate proceedings if the state preliminary courts decided to refer the case to them. In addition, the implementation of their verdicts had to go through the state preliminary court (article 29 of the law).

The modern penal code of 1917, modeled after French code, was a major step in the secularization of criminal justice. The inauguration of the Tehran School of Law (Madrasay-i Hoqūq) as the first modern higher legal education in Iran in 1918, completed this process. This school, which formed a pool of potential judicial personnel, was staffed primarily by French lawyers. It is noteworthy that until early the 1920s, almost all judicial personnel were educated in Sharīʿah education. In 1934, the School was merged into a School of Political Science and formed the Faculty of Law and Political Science of the University of Tehran.

Despite of all these modernizing elements, from 1910-1930 the new secular justice system (ʿadlyieh courts) could operate only in a few cities due to the instability and chaos within the political system. Further, the new court system was in an extremely impoverished situation. The First World War devastated the Iranian economy and damaged the state apparatus; many ʿadlyieh courts were suspended or became inactive in the provinces. Many cases, therefore, and possibly more than before, were referred to mujtahids and to the existing informal conflict resolution mechanisms.

In 1920, the Qajar dynasty formally ended, although it de facto collapsed in 1910. The Qajar rule was then replaced by the secular, autocratic, nationalist and military rule of the Pahlavi dynasty (1926-1979).

From 1921 to 1979, Reza shah (1878-1944) and his son Mohammad Reza shah (1919-1980), nostalgic for the pre-Islamic Iranian empire, launched a wave of secular, westernized legal and judicial reform in Iran. Looking at the situation of the judiciary in 1979, despite corruption and elitism, reveals that they succeeded in constructing a modern, centralized, secular and bureaucratic justice system.