

Special Court for the Clergy: Raison d'être, Development, Structure and Function

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Table of Contents

Introduction	1
1. Raison d'être	1
2. Formation	4
3. Trajectory of Development	8
4. Legal and Judicial Structure	11
4.1 Illegality of the establishment and continuation of the SCC	13
4.2 Illegality of the procedural code of the SCC	13
4.3 Exclusive vs. Specialized	14
5. The SCC in the Islamic Republic's Political Structure	14
5.1 Advantage or Disadvantage	15
6. Processes	15
6.1 Problems in the procedural code	15
7. Function	18

Introduction

The Islamic Republic's judicial system, in addition to ordinary, revolutionary, and martial courts, includes another court called the Special Court for the Clergy (SCC), which has given rise to problems and challenges in Iranian society in general, and in the country's political and religious establishment in particular. Although these courts and their related branches concern themselves with the clergy as a religious institution, they are also extensively entangled with other the divisions of the judicial system, the institutions of the legislative and executive branches, civil society, and the political community (parties, civil institutions, and the media). The Special Court for the Clergy's *raison d'être*, legal framework, jurisdiction, procedures, and rulings have always been questioned in the public sphere and subject to scrutiny. Criticisms regarding the structure, legal mandate, and function of this court have met with silence on the part of officials, or dealt with violently.

Analyzing the nature and function of the SCC as an appointed institution independent of the country's three branches of government—one that is often used to gain the upper hand in political rivalries, ideological purges of the clergy, and for political and social control—illuminates many obscure corners of the Islamic Republic. Its origin and development is a key chapter in the history of the Islamic Republic itself and the trajectory of this political regime's development. The SCC serves as a mirror that reflects the functions of the office of the Supreme Leader and the organs under its supervision, the judicial process in the Islamic Republic, and the regime's perspective on individual rights.

This essay, after outlining the reasons for the establishment and continued existence of the Special Court for the Clergy and a brief overview of its formation and transformation, will examine the court's trajectory of development in light of political events and changes in the structure of the Iranian government and administration. The SCC's position in the Islamic Republic's political, legal, and judicial structures will also be explored. Finally, it will look at the current procedures of the SCC, in view of its exclusive adjudicating principles and the court's record over the past three decades.

1. *Raison d'être*

The necessity of the Special Court for the Clergy (SCC) is based on three premises.

The first premise regards the importance of the role of the religious scholars. To support it, the following *hadith* is referenced: "If a scholar is corrupted, he will destroy an entire world." In this context, the clergy and ruling elite generally interpret "scholar" as "religious scholar" and "religious scholar" as "cleric."

The second premise is the emphasis on the role of an individual within an institution in creating an unfavorable image or misrepresentation of that entire institution in the event of deviating from institutional principles and standards. According to this view, an individual in clerical attire who commits an offence will be perceived by the public not as personally responsible but rather as representative of his entire institution. Therefore, a cleric who commits a crime endangers the reputation and trust vested in the clergy as a whole. In 1989, Iran's Supreme Leader, Ali Khamenei, in a meeting with SCC officials, said: "The actions of a few of us can destroy the political capital we have garnered over a thousand years. We have spent our capital to build something for ourselves; now, the actions of some of us may turn this capital into so much smoke. I told [Ayatollah Khomeini] that in my opinion, the solution [to this problem] is the Special Court for the Clergy."¹

The third premise, which is rooted in conspiracy theory, is that invisible hands are at work to defame the clergy in the public's eye through examples of clerics who deviate from the [institution's] standards. This

1. Farsi.khamenei.ir

conspiracy-minded view holds that non-conforming behavior by clerics can be attributed to enemy plots hatched by world powers and the Global Arrogance [i.e., the U.S.]. In the same meeting, Khamenei said: “One of Reza Khan’s plans for this country--which was surely developed by the British and powers that backed him, since he and his court didn’t have the acumen to devise such plans on their own—was to smear the clergy’s reputation. Today, instead of the British and Reza Khan and Mohammad Reza [Pahlavi], a man with a beard and a turban and a title who commits an offense can ruin all our hard work. The damage such people inflict is far more successful than what [Reza Khan] did. So, if we assume there is a political hand trying to corrupt the clergy, this would not be a far-fetched assumption.”²

This third premise was added by the Iranian Islamists who seized the reins of power in Iran to level these types of unverifiable and ineradicable allegations against anyone they wished to expel from the ranks of the clergy. The ruling elite feel most threatened by their fellow clerics because they are convinced that a populace that looks up to the clergy, on account of their religious beliefs, is liable to turn to these rival clerics. They also believe that among all groups in society, dissident clerics are best positioned to delegitimize the government. Accusations of cooperation with or being duped by foreigners was popularized in Iran throughout the 20th century as Iranians came to distrust foreign powers and their agendas. Ruminating

In the era when the clergy did not wield power in Iran, the first and second above premises were interpreted by clerics as ethical lessons advising prudence in their statements and actions. Lacking political power and the state organized apparatus of power, the clergy did not have the means to punish or expel delinquent members of their institution. Even disciplinary penalties administered by high-ranking members of the institution (such as *maraja*, or Sources of Emulation) were inconceivable. Clerics who complained about unqualified clerics (in terms of ethical or scholarly criteria), generally attributed this issue to problems of internal organization within the clergy as an institution.³

However, after the founding of a theocracy and the transfer of absolute power to the clergy, the politically and socially empowered clergy now cite the above-mentioned three premises to conclude that some organ must take on the task of the clerical establishment’s internal purges. The clergy, which had been a civil institution during the Pahlavi era and was unable to organize or regulate its ranks, after rising to power, immediately embarked on realizing of these aspirations. The problems of organizing Shiite clerics, in comparison to counterparts from other religions, had been studied in the 1970s by reformist clerics such as Morteza Motahhari and Mohammad Reza Hakimi.⁴ Their criticisms, however, were forgotten after the clergy’s ascension to power.

If a cleric holds a position of power, the failure to abide by institutional standards and ethics is not enough. In such cases, each and every member, even if they are outside the circle of power, must abide by the professional and political (rather than ethical or religious) standards set by the regime’s ideologues. It is on this basis that Khamenei openly defends the political nature of the Special Court for the Clergy: “Of course, there are some who are not corrupt, but their problem is a political one. They damage us in a different way. They abuse the prestige won for us by Imam [Khomeini’s] rebellion and the sacrifices made by him and many good clerics; they exploit this status to work against the Imam’s path and the course of the revolution. They must be dealt with. This is what this court is for.”⁵ This viewpoint raises the exigency of having the SCC even beyond the judicial system. Khamenei adds, “Perhaps this court is no less necessary than the

2. *Id.*

3. Morteza Motahhari, *Major Problems in the Organization of the Clergy: An Argument on Marjas and Clerics*, Sahami Publishing Co., Tehran, 1962: “In the organization of the clergy—unlike other organizations—anyone is admitted to wear the clerical attire. It is often seen that persons of no faith and no knowledge enter the profession solely to benefit from the advantages of the cloth and proceed to cause disgrace.”

4. Motahhari, see previous footnote; Mohammad Reza Hakimi, *The Institutional Identity of the Clergy*, Islamic Cultural Press Office, Tehran, 1981

5. Ali Khamenei, in a meeting with SCC officials on Nov. 4, 1990: Farsi.khamenei.ir

judiciary branch itself; we may even say in some aspects it is more necessary.”⁶

The importance of maintaining power and the political establishment, from the perspective of the ruling Islamists, extends to the point that innocent people can be sacrificed for it. The regime's ideological framework thus leaves no room for criticism of this court's record and rulings in accordance with judicial principles. In his 1989 meeting with Special Court officials, Khamenei said, “Sometimes, because there are big goals somewhere, other goals may be undermined. For instance, preserving the establishment necessitates that in holy war, if unbelievers use Muslims as a human shield, that is, if they place Muslim hostages or civilians in the line of attack, I believe that scholars would agree—as many Shiite and Sunni scholars have said so—that killing these Muslims would not be a sin, and does not entail paying a bloodprice, although murder of kin is *haram* [forbidden].”⁷

Concluding from the three premises noted above that there is a necessity for the SCC is signifies a total disregard for law or any goal other than preserving the status quo, for these seven reasons:

First, the disgrace of a scholar, from any field of knowledge, does not bring an entire world to ruin. This premise is hyperbolic and should be interpreted as ethical advice, not literally. Furthermore, this *hadith* concerns scholars of all types, and if the government claims to act on the basis of this *hadith*, it follows that an exclusive court for scholars in every academic field must be set up.

Second, damage to the image of an entire institution through the action of its individual members is plausible only to a degree and only in certain societies. Most people are capable of distinguishing between the behavior of an individual and a class; this power of discernment increases in relation to [people's] level of education. Furthermore, such a notion is contradictory, because the expulsion of a member from this institution undermines the credibility of clerical supervision over religious precepts and rituals.

Third, deviation from the institution's standards cannot be attributed to foreign enemies, and Islamic Republic officials have never presented any evidence to this effect.

Fourth, preservation of the [political] establishment—i.e. the absolute power of the clergy--does not give license to the government to violate the basic civil rights of its citizens.

Fifth, enemy conspiracies and the preservation of the political establishment cannot be used as grounds to violate of the Constitution and nor to grant authority to the Supreme Leader to create an institution that is above the law, unaccountable, and exempt from oversight. A suspicious mind will always tend toward conspiracy, and thus the violation of citizens' rights will become chronic and institutionalized.

Sixth, the social and political legitimacy gained by the clergy in the aftermath of the 1979 revolution did not result from the actions of a single individual or a group of clerics, and therefore, this history does not entitle them with the right to engage in purging and eliminating their critics and dissidents in religious institutions.

Seventh, the clergy's political legitimacy, or people's assumption that the government belongs to this class, is fundamentally wrong. This question has never been asked of people in any survey, elections or referendum to determine the extent of popular support for this notion. If we take public opinion to be unknown regarding the political legitimacy of the clergy and its exclusive right to governance, the actions of one cleric no longer threaten to mar this legitimacy.

6. *Id.*

7. *Id.*

2. Formation

The basis for the Special Court of the Clergy was formed on Khordad 3, 1358 (May 24, 1979) by Khomeini's order, even before the Constitution of the Islamic Republic was ratified. In his order founding the SCC, Khomeini admitted to the discriminatory nature of an exclusive court for the clergy but maintained that its formation safeguarded the political interests of the regime and the interests of the clerical establishment: "Although in Islam the punishment for criminals does not differ between classes and everyone is equal before the law, and criminals who committed crimes while wearing clerical attire must be punished; nonetheless, I am told that a number of opponents of Islam and the clergy are attempting to degrade the clergy in the name of purging and thereby opening the way for tyrants."⁸ The 'opponents' Khomeini mentions here were the revolutionary Muslim youth who considered a majority of the clergy subservient to or supportive of the Pahlavi regime and in their ideological fervor wanted to cleanse the clergy from such members after the Shah's fall. But Khomeini knew that it was conservative clerics, rather than the revolutionary youth, whom he depended on to ensure the survival of the regime in the long term.

As Khomeini and the revolutionary clerics who were loyal to him took up the mantle of power, they did not fear being the targets of the purges. Rather, Khomeini was worried about violence against the silent, conservative clerics by the reactionary clerics and Islamist laymen, such as the followers of Shariati and the People's Mujahedin (MKO). In the early years following the revolution, to consolidate his power against leftist, liberal, and nationalist forces, Khomeini needed the support of all politically-involved clerics as well as those who had entered the political arena only after the former regime's collapse. He did not want to lose them due to charges filed in the Judiciary's courts.

After justifying the rationale for founding a committee devoted to adjudicating criminal offenses committed by clerics, Khomeini considered how to set up this committee in various regions across the country: "Given that the clergy know their local fellow clerics, in provincial towns top scholars should form committees composed of three scholars of high credibility and two locals trusted by the community. These committees will attend to the legal cases of individuals with clerical backgrounds. After the crime has been proven, they will be sentenced under the supervision of the Islamic Revolutionary Court."⁹ According to this decree, it appears that only "committees" were to be formed for dealing with criminal charges against clerics and ultimately such cases would be referred to the revolutionary courts. But in the course of affairs and political events, the two local members were taken off the committees while the clerical core of the committees was effectively reduced to a one-judge court.

The second clause of Khomeini's decree on the formation of committees for adjudicating offenses by "pseudo-clerics" (a phrase used in early post-revolutionary years for dissident clerics opposed to the revolution and the Islamic Republic regime) indicates that this measure was intended not only for investigating the crimes of counter-revolutionary clerics and thus purging them, but also for fighting the axiom "Islam minus clergy" which in the 1970s had many advocates among religious political activists and even a number of revolutionary clerics.

A large number of students and college-educated religious forces in those years joined the cause of the revolutionary clerics through the school of thought set forth by Dr. Ali Shariati. Shariati was a staunch advocate of the concept of Islam minus clergy.¹⁰ In his speeches, Khomeini spoke of opposing this axiom

8. Ruhollah Khomeini, *Sahifeye Nour*, Vol. 7, pg. 466 Link

9. *Id.*

10. Ali Shariati, *Collected Works*, pg. 8: "Now, fortunately, just as Dr. Mossadeq's thesis 'Economy minus Oil' launched the quest for independence and liberated [the economy] from the clutches of exploiting companies, the thesis of 'Islam minus clergy' has gained hold in society and this success has freed Islam from the narrow confines of medieval thinking—the Church of priests—and from a perverted, superstitious worldview that breeds ignorance, one that labels intellectuals en-

for the sake of preserving the sanctity of the clergy (an appeal to the clergy) and for the sake of thwarting the ill-will of foreigners (an appeal to Islamist laymen): “No person or group is entitled to criticize or insult the clergy. The Revolutionary Court has a duty to prosecute such offenders. These warnings are for the sake of protecting the clergy’s venerable sanctity from the hands of foreigners, who use the thesis of ‘Islam minus clergy’ with the malicious intention of crushing the Islamic clergy who stand in the way of their interests.”¹¹

Khomeini, who understood and utilized the anti-imperialist fever of his age, cast the concept of Islam minus clergy as a ploy that served foreign interests so that those of his revolutionary followers who subscribed to Shariati’s ideas would remain convinced of the legitimacy of a clerical government. In his book, *Sahifeye Nour*, Khomeini writes: “The people must be mindful of this type of imperialist thinking and malicious ploy by the West; and our dignified people are obligated to let traitors penetrate their ranks and to report to the courts any who degrade the clergy and religious scholars.”¹²

Khomeini was aware of the negative image a court for clergy would have in public opinion after a revolution that had demanded equality. He therefore tried—even invoking God as his witness—to rationalize the government’s act in founding such a court: “God Almighty knows that I am as severe on corrupt mullahs as I am on no other type of person. A SAVAK agent is more respectable to me than a corrupt mullah! God Almighty knows that if this Special Court is founded, it is not for protecting [clerics]; it is for [prosecuting] the corrupt persons who wish to destroy respectable persons.”¹³ Khomeini’s definition of corruption was based neither on Shiite jurisprudence nor on the spiritual and philosophical ethics and conventions of Iranian society. Merely opposing Khomeini’s government or the clerical regime was enough to constitute “corruption.”

The biggest challenge faced by the ruling elite came in 1987 as Grand Ayatollah Hossein Ali Montazeri openly criticized Iran’s judicial due process and stood up to Khomeini’s views. This is when the government was in need of a Special Court with greater jurisdiction and unchecked authority. Thus Ali Razini, a religious adjudicator and Khomeini appointee, wrote a letter to Khomeini requesting “clarification on the subject of the jurisdiction of a Special Court for Clergy.” He did so on the recommendation of a small ruling circle, with whom he had close ties to and who governed the country while Khomeini was ill (Akbar Hashemi Rafsanjani, Ali Khamenei, Mir Hossein Mousavi, Ahmad Khomeini, Abdolkarim Mousavi Ardebili). In effect, Razini’s letter requested an expansion of the court’s jurisdiction, and after Khomeini’s approval this was implemented.

Razini, speaking on behalf of the government, asked for an expansion of the jurisdiction of the SCC and its branches, to include the following:

- 1- The SCC to have sole jurisdiction over all offenses by pseudo-clerics, including public and counterrevolutionary crimes and offenses related to clerical integrity.
- 2- The SCC should have jurisdiction over all of Iran and be centered in Tehran and Qom.
- 3- In cases in where the main culprit is a cleric, any non-clerical accomplices to the crime must also be tried at the SCC.
- 4- SCC judges must act according to religious principles.¹⁴

emies of religion and scared of Islam.”

11. Ruhollah Khomeini, *Sahifeye Nour*, Vol. 7, pg. 466 Link

12. *Id.*

13. Ruhollah Khomeini, *Sahifeye Nour*, Vol. 10, pg. 287. Link

14. July 22, 1987. Khomeini agreed to Razini’s requests, which were in fact his own desires, on July 28, 1987. Ruhollah Khomeini, *Sahifeye Nour*, Vol. 20, pg. 348. Link

These four reforms show that the Special Court for the Clergy was to move toward an expansion of its authority rivaling that of the Judiciary branch itself and toward becoming an important part of the regime's control apparatus. The first reform was to expand the Special Court's areas of jurisdiction. According to this request, any cleric, his family members, and office staff can be subject to prosecution by the SCC. Thus the SCC's activity is not limited to clerics and may extend to entities and persons under his supervision. Terms such as "counterrevolutionary crimes and offenses related to clerical integrity" are so broad and vague that they allow the government unlimited, unconditional levers to pressure dissident clerics.

The second article headquarters the SCC in Tehran and Qom, the country's two centers of power, and cancels the prior legal procedure whereby crimes committed by provincial clerics were referred to the revolutionary court. Despite the fact that the SCC had branches in eleven regions in the country, this article (Article 9 of the procedural code¹⁵), gives the ruling elite in Tehran and Qom the ability to sidestep powerful province-based clerics and prosecute virtually anyone.

The third article goes even further and makes the Special Court non-exclusive: anyone can be tried by this court. Stipulating a link between clerics and laypeople in political crimes allows for the SCC to easily extend its authority to laypeople and prosecute them without the burdensome legal regulations of the Ministry of Justice. The fourth article also removes all legal restrictions—including constitutional laws—from the SCC. The court is only bound to religious principles, which are determined by a religious adjudicator who has been approved by the Supreme Leader.

The next step was the financial independence of this court. Since it was independent from the Judiciary branch, the Majlis (Iranian parliament) faced legal obstacles in the 1980s and 1990s in granting legal validity to the SCC. This problem was partially solved by issuing a license for the SCC to make use of confiscated properties.¹⁶

There is no oversight over the budgets allocated to the SCC or its expenditure. The government assumes that the director of the SCC is responsible and will not commit financial offenses. It therefore does not require supervision—the same assumption is made in the case of the Islamic Jurisprudent, or Supreme Leader, whose position is above oversight. "Justice," in the Shiite clerical literature, is intrinsically formed within a cleric and cannot be tested by any method. This is why, in the history of the Islamic Republic, not

15. SCC branches will be formed in the following cities or judicial centers:

- 1- Tehran: Tehran and Semnan provinces
- 2- Qom: Qom and Central provinces and the town of Kashan
- 3- Mashhad: North Khorasan, South Khorasan, Khorasan Razavi, Sistan and Balouchestan provinces
- 4- Esfahan: Esfahan, Yazd, Charmahal and Bakhtiari provinces
- 5- Shiraz: Fars, Bushehr, Kohkiluyeh and Boyer-Ahmad provinces
- 6- Tabriz: East Azerbaijan, West Azerbaijan, Ardebil, Zanjan provinces
- 7- Saari: Golestan and Mazandaran provinces
- 8- Ahvaz: Khuzestan and Lorestan provinces
- 9- Kerman: Kerman and Hormozgan provinces
- 10- Hamedan: Hamedan, Kurdistan, Kermanshah and Ilam provinces
- 11- Rasht: Gilan and Qazvin provinces

16. Following the religious adjudicator of the SCC Ali Razini's request (#15/338/66) dated Oct. 18, 1987 that "funds and properties registered as belonging to unknown owners be used to support families of prisoners and persons with religious entitlement. Also, funds obtained from the Public Trust be used for the urgent need of the courts," Khomeini wrote in reply, "Mr. Mousavi, the head of the Supreme Court, has been informed of the approval to use such funds as you require." Ruhollah Khomeini, *Sahifeye Nour*, Vol. 20, pg. 401. Link

a single judicial or clerical figure has been removed from their post on grounds of failure to uphold justice.

The four reforms above, as well as financial independence (which was acquired in the late 1990s after the designation of a public fund), provided the Special Court for the Clergy with the authority required to shift political power to the extent of dismissal of the supreme leader's successor. Later, it turned the Supreme Leader into the indisputable authority in seminaries and religious institutions. Khomeini, using the powers of this court, was thus able to silence or purge most of his clerical opponents.

Khomeini, cognizant of the problems that would arise from clashes between the government and the clergy and the illegal actions toward dissident clerics, could not see a way to ensure the observance of justice. In his reply to Razini's inquiry about "clarification of the jurisdiction of the Special Court for the Clergy," Khomeini simply noted this untenable point: "Hopefully the honorable judges and courts will consider God present and observant, and will not deviate from justice and religious edicts, especially in this dangerous affair."¹⁷ No judicial system in the world regulates its judges simply using God's oversight. Whenever there are no means for oversight—by other branches, the media, or the public—the likelihood of unlawful acts increases.

In the Khomeini period, from a legal perspective, two major changes occurred in the Special Court. The first development was the drafting of a procedural code for the SCC and its branches. On August 5, 1990, a procedural code with 47 articles and 10 clauses drafted by Mohammad Mohammadi-Reyshahri, was approved by the Supreme Leader. Pressured by traditionalist clerics who were constantly targeted illegally by the Special Court, and revolutionary clerics loyal to Khomeini who felt their position had grown shaky after his death, Khomeini agreed to allow the drafting of this procedural code. On December 26, 2005, an amendment and appendix to the SCC code proposed by Mohammad Salimi was signed off by Khomeini.

In over two decades of Khomeini's rule as Supreme Leader, the Special Court and its branches used the office of the Supreme Leader and its appointees for four specific objectives. The first objective was the consolidation of Khomeini's political leadership, which at its inception lacked the criteria of legal, conventional, and charismatic authority. Despite his lack of *marja* (source of emulation) status, Khomeini had been appointed Supreme Leader by the Assembly of Experts before the Constitution was revised—an act that stood in clear violation of Article 109 of the 1979 Constitution.¹⁸ Unlike Khomeini, Khamenei did not possess a charismatic image among the religiously devout. Furthermore, Khamenei had never attained a high-ranking status as a theologian at the seminaries. The Special Court for the Clergy prosecuted clerics who questioned Khamenei's leadership on the basis of lacking these criteria of legitimacy.

The second goal was to strengthen Khamenei's status as a *marja* (source of emulation) at the seminaries. In addition to Khamenei's obligatory provisions for seminary students, such as paying higher stipends, building dormitories, and providing health insurance, other *marjas* were pressured not to interfere in matters in which the Supreme Leader's office is the sole authority, such as determining the end of Ramadan and other such fatwas. Anyone who overstepped on the Supreme Leader's territory was subject to various kinds of pressure, such as his office staff being subpoenaed, his bank account being closed, etc.

The third goal was to facilitate the merging of religious institutions into the government. Khomeini's policy had kept religious institutions separate from the government while granting these institutions various services via the seminaries. But Khamenei feared the independence of religious institutions, especially the

17. *Id.*

18. The criteria for the post of Supreme Leader was changed in the Constitution revision to "qualified in the theological knowledge and piety necessary for the status of Marja [Source of Emulation], and possessing sufficient political and social acumen, courage and capability for leadership." The condition of being Marja was removed from the revised Article 109 after Khamenei came to power as Supreme Leader.

seminaries. He poured trillions of tomans (billions of dollars) into the seminaries and gave services such as health insurance to clerics, as well as allocating a governmental budget to the seminaries. While interfering in the way religious institutions were run, he deprived them of financial and administrative independence. The Special Court meanwhile prosecuted individuals who believed in the ideological, financial and administrative independence of religious institutions.

The fourth goal was de-Khomeinization. A look at a list of the most high-profile cases at the SCC and the Revolutionary Court during the 1990s and 2000s reveals the names of Khomeini's closest advisors and his representatives at revolutionary and government institutions. During these decades, Khomeini attempted to bring the government under his full authority, and present himself as a leader who takes charge. Anyone who challenged him with reference to Khomeini's legacy was prosecuted by the SCC. Abdullah Nouri (Khomeini's representative in the Construction Research Center) and Mohammad Mousavi-Khoeiniha (General Prosecutor in Khomeini's time) are two clear examples of these types of SCC cases. The SCC was very successful in sidelining these two figures.

3. Trajectory of Development

The activities of the Special Court for the Clergy peaked during five periods:

- 1) The early years following the formation of the Islamic Republic (1979-1980), when it was necessary to defrock clerics connected to the Pahlavi regime, or whose teachings were not in line with that of traditionalist clerics.
- 2) The years of the Islamists' consolidation of power (1979-1982) against forces opposed to the tenet of *velayat-i faqih* (Rule of the Jurisprudent), the Nationalist-Religious parties, and the MKO. During this time, the clerics close to these groups were ostracized from the clerical establishment.
- 3) The period of the dismissal of Ayatollah Montazeri from his post as successor to the Supreme Leader (1987). Clerics close to Montazeri were prosecuted and many of them were imprisoned.
- 4) The years of the height of the reform movement (1998-2000), when reformist clerics had to somehow be expelled from the political community or isolated.
- 5) The years of extreme repression of demands for ethnic minorities and civil rights (2009)

During the first period—when counterrevolutionary clerics or clerics close to the Pahlavi regime were targeted—charges such as “counterrevolutionary actions,” “collaboration with the Pahlavi regime” and “actions damaging clerical integrity” were used to prosecute and defrock clerics. Clerics who received salaries from endowments and had failed to join the revolutionary cause, and those who had worked with cultural and media institutions in the Pahlavi era, were the main targets of this period of confrontation.

Charges against clerics in the second period—during the regime's consolidation of power—included charges such as conspiring for or being privy to information on an attempted “coup d'état.” An important figure who was prosecuted by the SCC during this period was the Shiite marja Grand Ayatollah Seyyed Kazem Shariatmadari. According to Hassan Shariatmadari, his son, in an interview with Radio Zamaneh, the interrogation took place at his father's home. “After the interrogation, the Revolutionary Guard surrounded my father's house in Qom. During the days of the siege, Mr. Reyshahri and others interrogated him. Then they edited my father's interrogation tape and turned a six-hour interrogation into a confession of several

minutes and aired that on television.”¹⁹

In his memoirs, Ayatollah Montazeri writes that the charges against Shariatmadari (of allegedly working with Sadeq Qotbzadeh to use explosives and stage a coup) were made simply to purge him. Montazeri writes: “Later, I heard from a credible source that the incident where explosives were thrown into a well, near the residence of the late Imam [Khomeini], was completely trumped-up. The aim was to fabricate a case against the late Mr. Shariatmadari.”²⁰

In the interval between the consolidation of clerical power and the dismissal of Montazeri as the Supreme Leader’s successor, while the country was bogged down in a devastating war, the SCC engaged in limited activity and therefore no attempts were made for its bureaucratic expansion. But the need for an authoritative body to remove Montazeri once again necessitated the expansion of this court and the reshaping of its structure. As a result, in June 1987, Khomeini appointed Ali Razini as religious adjudicator of the Special Court for the Clergy and Ali Fallahian as its prosecutor. Both men were among the harshest religious jurists and graduates of the Haqqani School in Qom.

Allegations made against Montazeri’s followers and aides ranged from murder to sodomy. In this period, given Montazeri’s popularity among a wide swath of revolutionaries, charges rooted in paranoia—what later became prevalent as “acts against national security”—were not viable. Thus, legal and ethical allegations were more suitable pretexts for eliminating Montazeri’s aides. People like Mehdi Hashemi, brother to Montazeri’s son-in-law, were prosecuted on charges relating to events that occurred two decades earlier, such as the murder of Shamsabadi, in order to pressure Montazeri.

Mehdi Hashemi had been the head of the Revolutionary Guard’s Liberty Movement Unit and the source who had disclosed the meeting with Robert McFarlane [in the Iran-Contra affair]. By order of the Special Court, Mehdi Hashemi was executed on September 28, 1987. Fathollah Omid Najafabadi, a Majlis representative and judge in Isfahan, who was involved with Hashemi in the disclosure of the McFarlane affair and belonged to the circle of Najafabadis who supported Montazeri, was charged with sodomy and executed by the SCC on November 7, 1988. Mehdi Hashemi and Omid Najafabadi were both political prisoners during the Pahlavi era. This period can be considered a time of power struggles between revolutionary clerics over the future of the country.

The next period saw the purging of reformist clerics and Khomeini loyalists. Mohammad Mousavi-Khoeiniha²¹, Abdullah Nouri²², Mohsen Kadivar²³, Hassan Yousefi-Eshkevari²⁴ and many others were

19. Zamaaneh.com

20. Amontazeri.com

21. In 1999, *Salaam* daily, which was managed by Mohammad Mousavi-Khoeiniha, was shut down for publishing a report that named the principle author of Press Reform bill as Saeed Emami, a chief suspect of the Chain Murders of dissident intellectuals. The court ruled that Mousavi-Khoeiniha was banned from publishing *Salaam* for five years.

22. Abdullah Nouri, the managing editor of *Khordad* newspaper, was subpoenaed to appear before the SCC for portraying Islam in a different light than its portrayal by hardliners. After several trial sessions, he was convicted of “blasphemy,” “publishing falsehoods” and “acts against national security” and given a five-year prison term. His defense was published in a book called “Poisoning Reform” (*Poisoning Reform: the Defense of Abdullah Nouri in the Special Court for the Clergy*, Tehran, 1999). The SCC prosecutor, who wrote the 44-page indictment against Nouri, was Mohammad Ibrahim Nekounam, and the judge was Mohammad Salimi. The prosecutor maintained that the articles in *Khordad* newspaper reeked with plots to overthrow the regime. Nouri’s defense attorney was Mohsen Rahami. The jury included: Abdolreza Izadpanah, Kazem Sadighi, Mostafa Pourmohammadi, Mohsen Doagou, Ruhollah Hosseinian, Masih Mohajeri, Mahmoud Doaei, T. Hashemi, and Mohammad Ali Nezamzadeh, the last three of whom did not appear in court and were replaced by Abolhassan Navab, Jafar Shabiri, and Akbar Abutorabi. The plaintiffs in the case were the Committee to Revive Moral Guidance, the NAJA intelligence unit, Student Basij, and Rafat Bayat, the managing editor of the weekly *Azadi*.

23. The SCC arrested Kadivar on Feb. 28, 1999. He was imprisoned for 18 months. For the text of the indictment, defense, verdict and court records refer to *The Price of Freedom: Mohsen Kadivar’s Defense at the Special Court for the Clergy* by Zahra Roudi, Ney Press, 1999.

24. After returning from Germany, Hassan Yousefi-Eshkevari was arrested on charges of attending the Berlin Conference. In a

prosecuted, imprisoned or defrocked during this period. Allegations made against reformist clerics were generally “insulting regime officials,” “publishing falsehoods to aggravate public opinion and against religious principles,” “opposition to the Imam [Khomeini]’s ideas” and propaganda activities against the Islamic Republic establishment” (Nouri)²⁵, “disclosing classified documents” (Mousavi-Khoeiniha), “propaganda against the regime” (Kadivar), “publishing falsehoods about the Chain Murders,” “blasphemy,” and “attending a conference” (Yousefi-Eshkevari). Other clerics were charged with the same type of allegations. The Special Court’s sentences varied from three-year prison terms to the death penalty (which was often subsequently reduced to seven-year prison terms). Montazeri’s students were also hunted and prosecuted during this period.

One notorious SCC case in the mid-2000s was the trial of a secular cleric (who believes in the separation of religious and governmental institutions) and dozens of his laymen supporters who believed in the separation of religion from state institutions. Seyyed Hassan Kazemeini Boroujerdi was arrested in summer 2006 and was convicted in 2007 of “warring against God,” “acts against national security,” and “attempting to overthrow the regime” in a closed trial and without access to an attorney. The court ruling was announced on September 16, 2007. Based on this ruling, his sentence was reduced from the death penalty to serving a one-year prison term in Tehran and a ten-year prison term in exile in the city of Yazd, being stripped of his title, position and defrocked, and confiscation of his residence and all assets.²⁶ Again during this time, the hunting and prosecution of reformist clerics, many of whom were Montazeri’s students, continued—a notable example being Hadi Ghabel.²⁷

In most recent period, traditionalist clerics who oppose Khamenei became the primary targets of prosecution by the SCC. In November 2009, the Special Court for the Clergy’s eastern branch in the city of Mashhad issued numerous subpoenas for clerics in the province of Sistan and Baluchestan²⁸. The subject of the subpoenas was the presence of foreign seminary students at Sunni schools. Most foreign seminary students at Sunni schools are Afghans whose families live and work in Iran and have not yet returned to Afghanistan, as well as students from Tajikistan who come to Iran to study the Quran and Islamic jurisprudence.

closed trial, he was convicted of “acts against national security,” “spreading lies about officials” and “insulting the clergy,” and found guilty of being an “enemy of God,” which in Islamic Republic carries the death penalty. In October 2000, the SCC summoned him and announced a new ruling. Based on this ruling, Yousefi-Eshkevari was sentenced to four years of prison for “debating the changeability of Islamic social edicts and voluntary hijab” at the Berlin Conference, and an additional year in prison for having attended the conference. He received another two-year prison term for “publishing lies” about the Chain Murder files. He was imprisoned from 2000-2003 and released on parole.

25. Hamshahri newspaper, Oct. 31, 1999

26. Boroujerdi.eu

27. Hadi Ghabel, a member of the Participation Front’s central council, was arrested by the SCC on September 12, 2007 and after 22 months in jail, was released in November 2009. The charges against him were “propaganda against the regime” and “insulting the supreme leader and officials.”

28. Their names are as follows:

- 1- Molana Mohammad Yousef Hosseinpour, director of Gosht Saravan seminary
- 2- Molana Ahmad Naroui, administrative manager of Dar al-Ulum and temporary Friday Prayer leader of Zahedan
- 3- Molana Abdulghani Badri, educational manager of Dar al-Ulum and temporary Friday Prayer leader of Zahedan
- 4- Molana Mohammad Gol, director of Makhzan al-Ulum seminary in Khash
- 5- Molana Osman, director of Madina al-Ulum seminary and Friday Prayer leader of Khash
- 6- Molana Mohammad Esmail Zehi, director of Esha Tohid school in Zahedan
- 7- Qari Abdollatif, director of Tajvid Quran school in Zahedan
- 8- Molavi Abdolrashid Nazem, director of Dar al-Hoda in Khash

Students who study at seminaries in Sistan and Baluchestan were not causing any tensions or difficulties for local residents and were simply pursuing their education. Sunni scholars had repeatedly tried to get licenses from provincial and national officials. Five years after these schools began working, while some of their students had already graduated and others were still enrolled, the SCC pressured the schools' scholars to expel the foreign students. This is while thousands of foreign students, both Shiite and Sunni, study in Iran on student visas at "Mustafa Society" and other Qom seminaries, as well as seminaries in Gorgan and other cities.

Another criticism of the SCC's treatment of Sunnis is the question of whether Shiite clerics even have the right to prosecute Sunni clerics. Given the rivalry between these two sects, the Special Court, with its Shiite prosecutor and judge, in principle cannot put Sunni clerics on trial for performing their religious duties.

In addition to Sunni clerics, Shiite clerics who support minority rights have also been targeted by the SCC. For example, the SCC's second Qom branch sentenced Abdulaziz Azimi Qadim, an Azeri activist cleric, to a one-year suspended prison term in February 2007.²⁹

In the wake of the 2009 protests that erupted in reaction to massive fraud in the tenth presidential election, tens of thousands of people were summoned and arrested, some of whom were clerics. During this time, several members of the Society of Teachers and Researchers at Qom Seminaries (executive director Seyd Abolfazl Mousavian, Ahmad Ahmadpour, and Mofid university board member Abdolrahim Soleymani), as well as clerics who supported Mir Hossein Mousavi (Mohammad Zobeihi, director of the Center for Dean and Teacher Training in Qom, Mostafa Mir-Ahmadizadeh, law professor at Qom's Mofid university) were arrested. Former vice-president, Mohammad Ali Abtahi, despite being a cleric, was arrested by the Revolutionary Court and forced to confess at a televised show trial.

4. Legal and Judicial Structure

The only "special courts" established by the 1979 Constitution were military courts. Based on Article 172, "For the purpose of investigating the crimes related to the special military or police duties of the members of the Army, Police and the Islamic Revolutionary Guard Corps, military courts shall be established in accordance with law. However, their ordinary crimes ... shall be investigated by the public courts. Military prosecutor's office and military courts are a part of the Judiciary and shall be subject to provisions related to the Judiciary." All other courts are public courts –although the Revolutionary Court, like the SCC, was established despite clearly contradicting the text of the Constitution, it is nonetheless part of the Judiciary and subject to its laws. But the SCC is not part of the Judiciary and is not subject to its procedures.

According to statements made by persons who support the SCC, it appears that six justifications have been stated for the court's establishment and continuation.³⁰ Here, we will examine each of them in context of the Islamic Republic's legal structure:

1) The principle of the "Absolute Rule of the Jurisprudent" had not yet been added to the Constitution at the time of the SCC's founding. Khomeini established the court in view of his theory of Rule of the

29. Azimi Qadim was tried by the SCC in April 2005 for charges of "damaging the reputation of the clergy" and sentenced to a 10-year ban on wearing clerical attire. He did not, however, abide by this sentence, and was sentenced by the SCC in Qom to a suspended one-year prison term for insubordination. He was arrested on May 3, 2007 after being subpoenaed to the SCC in Qom and was sent to Qom's Langeroud prison to serve his sentence. Feministschool.com

30. Some of these reasons are mentioned in: Seyd Mohammad Zaman Daryabari, *The Special Court for the Clergy*, Islamic Revolution Document Center, 2004.

Jurisprudent and in anticipation to becoming the supreme leader, a position that is not subject to oversight or accountability and is therefore above the law. The Absolute Rule principle, according to one interpretation of the Constitution, can overstep the Constitution in case of expedience and necessity, and the Supreme Leader can, by direct order, establish new institutions or dissolve existing institutions. Subscribers to this interpretation make reference to Article 5 of the Constitution: “During the Occultation of Hazrat-e Valli-e Asr [the Messiah] (May God hasten his reappearance), the leadership of the nation in the Islamic Republic of Iran shall be the responsibility of a Faqih who is just, virtuous, has contemporary knowledge, is courageous and [an] efficient administrator. He shall assume such responsibility in accordance with the provisions of Article 107.” According to those who oppose the Rule of the Jurisprudent being ‘absolute,’ this article does not accord “absolute authority” to the Jurisprudent, and the country’s supreme leader must act according to the 11 duties and authorities stipulated by Article 110, which makes no mention of any “absolute” authorities for this post. Lawmakers who sought to restrict the supreme leader’s authority were not looking to vest the leader with absolute authority.

2) The SCC is founded on the basis of the principle of Limited Jurisdiction of the Courts. Based on this view, public courts cannot investigate the crimes of the elite class of society, the clergy. This reasoning is in clear contradiction of the text of the Constitution. Based on Article 61 of the Constitution, the Judiciary’s public courts are obliged to review all complaints and lawsuits: “The judicial power shall be exercised by the courts of the Justice Ministry, which shall be established according to the Islamic precepts and shall engage in setting disputes and claims, safeguarding the public rights, promoting and carrying out justice and implementing hodoud [physical punishment] as ordained by religion.” Article 159 of the Constitution also states, “The Ministry of Justice shall be the official authority to deal with grievances and complaints. The manner of establishment of courts and their jurisdictions shall be laid down by law.”

3) Another rationale is that the SCC will expedite justice in cases of disputes between clerics within the Islamic Republic political structure.³¹ The expediting of political trials related to a certain class in society is also a clear contradiction of the text of the Constitution.

4) Most SCC trials are closed to the public. The rationale for holding closed trials has been the preservation of the integrity of the clergy in society. However, according to Article 165 of the Constitution, “Trials shall be conducted openly and the presence of the people therein shall be allowed unless the court decides that it would be contrary to public morals or public order, or in private lawsuits where the parties to it request that the trial be held in camera.”

5) Another rationale for the establishment and continuance of the SCC is the idea that judges dealing with clerics, must be experts in the affairs of the clergy. According to Article 159 of the Constitution, this issue can be presented to the *Majlis* as a legislative bill that determines the jurisdiction of a court in the framework of the Ministry of Justice, but it cannot be regarded as the basis for forming a court independent of the Judiciary branch.

6) The last rationale for forming the SCC is that it curbs the influence of the clergy who, given their political clout, may manipulate court rulings. However, such influence over the courts is not a problem so exclusive to any single class, to necessitate a separate court for it. Many individuals and groups with wealth, social status, political influence and religious standing can potentially influence court rulings in their favor. Based on the above rationale, a court that is independent of the Judiciary must be formed for all influence-wielding groups, such as merchants, doctors, professors, government officials, CEOs, etc.

31. Noorportal.net

4.1 Illegality of the establishment and continuation of the SCC

No article in the Constitution of the Islamic Republic, neither in its original text nor its revised version, refers to the Special Court for the Clergy. According to Article 157 of the Constitution, the country's judicial affairs fall under the framework of the Judiciary branch: "For the purposes of carrying out the responsibilities of the judiciary in all judicial, administrative and executive matters, the Leader shall appoint, for five years, a Mojtabeh who is just, has knowledge of judicial matters, is prudent and has managerial skills, as the Head of the judiciary who shall be the highest authority of the judiciary." The Islamic Republic's Judiciary branch has no oversight whatsoever on the Special Court for the Clergy and does not interfere in the judicial process and rulings of this court. Nevertheless, the procedural code of the SCC obligates the Judiciary to provide the judicial personnel of the SCC (Article 46).

According to Article 107 of the Constitution, "The Leader is equal before the law with the other people of the country." Therefore, clerics and other citizens are equal before the law. Thus the very existence of an exclusive court for clergy, whose crimes are of same kind as other citizens, is unconstitutional. The SCC promotes both positive and negative discrimination. Positive discrimination means cleric offenders who have government ties can benefit from special privileges and reduce their sentences. Negative discrimination means that dissident clerics accused of crimes are deprived of even ordinary civil rights, such as access to an attorney or an open trial. The SCC is intrinsically defined by the different treatment of clerics versus ordinary citizens.

There are two different interpretations of the Constitution regarding the limits of authority of the Supreme Leader. According to hardliners, the Supreme Leader has unchecked power and is not limited to the authorities specified by Article 110 of the Constitution. Proponents of this view believe that if the Supreme Leader's authority was limited to the cases in Article 110, no mention of his authorities would be made in any other articles. Therefore, the Supreme Leader's authority is not exclusive but absolute, and those mentioned in Article 110 and other articles of the Constitution serve as examples for reference. The reformist interpretation of the constitution limits the Supreme Leader's authority to the items mentioned in Article 110, and more generally, it views the Supreme Leader as subject to the Constitution rather than above or outside of it. According to the first interpretation, the establishment of the SCC or any other exclusive court by order of the Supreme Leader is legal and warranted, while according to the second interpretation, this court is illegal and must be dissolved.

4.2 Illegality of the procedural code of the SCC

The procedural code of the Special Court for the Clergy was drafted by the SCC itself and signed off by the Supreme Leader. This text is therefore unlawful. Article 71 of the Constitution states, "The *Majlis* may, within the limits of the Constitution, enact laws on all matters." In addition, Article 73 states that "The interpretation of ordinary laws shall be within the competence of the *Majlis*. However, this article shall not prevent the judges from interpreting laws while administering justice." Therefore, only a judge can interpret ordinary laws and other institutions do not have this right nor the right of legislation.

Article 168 of the Constitution states that "Political crimes and press offences shall be tried openly and shall be carried out by a court of law in the presence of a jury," and during the reform period, under the pressure of a reformist administration and parliament, the Special Court for the Clergy appointed a jury made up of clerics to be present during trials where the defendant was accused of press offenses. However, this provision was forgotten after the administration and parliament changed. Cases of prosecution against clerics for press offenses have occurred less frequently than those for political offenses. Despite the clarity of the above-cited article, the SCC has agreed to the presence of an (appointed) jury for sensitive press trials

(such as Abdullah Nouri) but has never allowed a jury to be present at political trials.

4.3 Exclusive vs. Specialized

The SCC is an exclusive court but not a specialized one. Specialized courts are differentiated by the type of issues, such as family courts, children's courts and press courts, and with the primary reason for this differentiation being the need for the prosecutor and judges to have special knowledge and expertise in the given area. However, exclusive courts exist solely for prosecuting a specific type of defendant that is politically sensitive.

5. The SCC in the Islamic Republic's Political Structure

Why was the SCC established and how did it continue to exist? Why is the court placed under the direct supervision of the Supreme Leader, to the extent that its director and its prosecutor are directly appointed by the Supreme Leader (based on articles 3 and 10 of the court's procedural code)? These are questions that can be answered only by looking at the position of the SCC within the political structure of the Islamic Republic of Iran.

There are four specific reasons why this court was established under the direct oversight of the Supreme Leader. First, in the Islamic Republic regime, power is concentrated in the hands of the Supreme Leader, a figure who rises from among the ranks of the clergy. The most brutal political rivalries occur within the ranks of the clergy, and naturally, the Supreme Leader is most sensitive to rivals in this class. The SCC, independent from the Judiciary and the Supreme Court, allows the Supreme Leader to control those who challenge his power at seminaries and other religious institutions through judicial means.

According to Article 13 of the SCC's procedural code, is the court has additional jurisdiction over "all affairs that are commissioned by the Supreme Leader." This article gives the Supreme Leader and his office the means to immediately prosecute its critics. Recognition of the legitimacy of the Supreme Leader has been one of the Islamic Republic's priorities in its religious policies, and in fact, recognition of the Supreme Leader is necessary to be eligible to study at the seminaries.³²

The second reason is that the SCC's independence gives the Supreme Leader the ability to approve a distinct procedural code for this court and to revise it without legislation by the *Majlis*. This effectively establishes the court as a tool under the Supreme Leader's control that is unsupervised by any elected institution.

The third reason is that exclusive courts independent of a country's official government branches tend to operate as an instrument of coercion for that country's leaders. It is through this instrument that they can pressure the official branches of government or sidestep them altogether. Similarly, rulers in non-democratic societies usually keep the military divided so that in the event of unsatisfactory behavior from one faction, they can appeal to another; factions compete with one another and keep each other in check.

The fourth reason is that ambiguity in the definitions of terms in the SCC's procedural code—especially interpretations of terms such as "cleric" "deviant" "integrity" and "damaging the reputation of the clergy and the regime"—allows the Supreme Leader to regularly prosecute dissident clerics and non-clerics and fabricate cases against them. The SCC has also prosecuted individuals who are not clerics but have studied

32. According to a memo issued by the Seminary Educational Administration, Feb. 17, 2010. Alef.ir.

at seminaries.

Article 16 of the SCC's procedural code states that "a cleric is defined as someone who wears clerical attire, or is studying at the seminary, or is otherwise occupied but considered a cleric by convention." The third part of this definition allows any person to be described as a cleric, since the theocracy's officials define what "convention" is. So, the family members of clerics have also been prosecuted by the SCC.

5.1 Advantage or Disadvantage

The existence of a special court for a certain class has its advantages, but it also entails additional costs since members of this class hold positions of power. Can the SCC be deemed an advantage for clerics, similar to their tax exemption or the exemption from mandatory military service? Or, does the existence of the SCC bring increased pressure on the clergy as they exercise their social, cultural and political rights?

The SCC has functioned as a double-edged sword for the clergy. On one hand, in many cases it has allowed clerics to receive reduced sentences in comparison to similar crimes committed by ordinary citizens, often being let off with the punishment of being defrocked. On the other hand, some clerics have received harsher sentences for their crimes compared to the same crime committed by an ordinary citizen.

6. Processes

For more than a decade, the SCC functioned without a procedural code, so judges of this court could treat defendants arbitrarily, in addition defendants could not appeal their verdicts.

The first procedural code for the SCC³³ was approved by the Supreme Leader on August 6, 1990. The text of this document refers to the procedural code as "law," although it was never approved by the *Majlis*. An amendment to the code was signed by the Supreme Leader on November 27, 2005. The most important changes to the code included: creating an appeals court, changes in the processing of claims, indictments and the acknowledgment of the defendant's right to appeal.

6.1 Problems in the procedural code

Objectives: Repeatedly, clerics have been prosecuted for acts that are considered detrimental to the dignity or reputation of the clergy. Article 1 of the SCC's procedural code states sets out the objective of forming this court: "curbing the influence of deviant and delinquent individuals in the seminaries, preserving the reputation of the clergy, and punishing clerical offenders." Article 31 of the code removes the condition of a defendant being a cleric and expands the court's jurisdiction to include any citizen: "Accusations against the associates and deputies of the accused [cleric] will be reviewed in this court." Given the broad presence of clerics in the political arena, most of the Islamic Republic's statesmen may be prosecuted by the SCC on the basis of this article.

Based on terms such as "deviant"—a term used by the ruling clerics to refer to any dissident—and "preserving the reputation of the clergy," any individual, anywhere, at any time and from any profession

33. www.dadkhahi.net

may be prosecuted. A clause in Article 18 of the SCC's procedural code states that "actions which tarnish the reputation of the clergy and the Islamic revolution will be considered crimes for clerics." The inclusion of "the reputation of the Islamic revolution" in this clause furthers the carte blanche given to the court to indict whomsoever they please. The theocracy regards itself responsible for the clerical establishment and sets up the SCC in the name of preserving the integrity of the men of cloth.

Duties: Section B of Article 2 includes "providing guidance in matters where integrity is violated" among the duties of the SCC. Based on the Constitution, courts are formed to issue verdicts of guilt or innocence, not to provide guidance. No article in the Constitution mentions "providing guidance" among the duties of the courts. According to Article 156 of the Constitution,

The judiciary shall be an independent power that protects individual and social rights, shall be responsible for implementing justice and shall carry out the following functions:

1. To examine and pass judgments in respect of litigations, violations, complaints; to settle lawsuits, resolve hostilities and to take necessary decision and action in respect of that part of matters of personal status to be laid down by law.
2. To restore public rights and to promote justice and lawful freedoms.
3. To supervise the proper implementation of laws.
4. To uncover crimes, to prosecute and punish the criminals and implement Hodoud and the Islamic codified penal provisions.
5. To take suitable measures for preventing the commission of crime and to reform the offenders.

The Article outlines all of the duties of the Judiciary, which after issuing its judgments, is only supposed to prevent the commission of crime and the rehabilitation of criminals. "Providing guidance," however, is a vague phrase invented by the Supreme Leader's office to put pressure on dissident clerics. This clause turns the SCC into a setting where clerical and non-clerical citizens can, under the guise of "providing guidance," be threatened and intimidated. Since cases concerning "integrity" do not generally fall under the category of any crime or offense, the court uses this authority of "providing guidance" to expand its reach; but this loophole, though extending its authority, undermines the claim that the SCC is a true court of law.

Actions that "damage the reputation and integrity of the clergy" have not been defined in any legal texts and are essentially un-definable. Do acts such as going to the movies, eating at a restaurant, swimming in the sea or participating in a sports competition constitute "damage" to a cleric's integrity? This is an issue of contention among Shiite clerics. If the term "integrity" is meant in the sense prevalent among the clergy, to mandate clerics to observe it, the SCC's courts must hold trials in the presence of a jury composed of clerics chosen randomly (rather than appointed members, as is the custom for press trials in Iran). Determining what actions "damage the reputation and integrity of the clergy" is, however, up to a judge who is appointed directly by the Supreme leader and who prioritizes the interests of those in power rather than the rights of citizens.

Agents: With the addition of a clause to Article 2 of the procedural code, the SCC gained the power of control over all religious institutions. This clause states that "in executing the duties and objectives stated in Article 1 and 2, the SCC can act through seminaries, Islamic promotional organizations, administrative centers for mosques, and other institutes relating to clerical affairs; these institutions are obligated to cooperate with the SCC in implementing these stated duties and objectives." Through this clause, religious institutes are turned into the agents of the SCC and must report on cases in accordance with its wishes.

Article 22 of the procedural code states these "agents must immediately report any allegation or misdemeanor that falls under the jurisdiction of the court to the SCC, and they must refrain from taking any action until granted permission." These conditions bring clerics under the constant surveillance of the SCC. Religious

institutions are not only responsible for spying on their members but must also act as their interrogators and assist in gathering evidence that proves their crime: “With regard to openly committed crimes, agents are responsible to immediately take the necessary measures to secure the instruments, traces, and evidence of the crime, and to prevent the criminal’s escape, perform the preliminary investigation, and report the incident as soon as possible to the SCC” (Article 23). The SCC expects all religious institutions to constantly monitor and police their cleric colleagues and play the role of informant for the SCC.

Settling disputes: In the event of a disagreement between the SCC and any of its branches, Article 28 of the civil legal code states that the Supreme Court has jurisdiction to arbitrate such disputes. Similarly, disputes between other judicial offices and the SCC are also referred to the Supreme Court. However, the Supreme Court is part of the Judiciary, and given that the SCC is independent of the Ministry of Justice, this referral is not legally valid.

Jurisdiction: The boundaries of the jurisdiction of the public court and SCC are ill-defined and have been deferred to the judgment of the SCC prosecutor. Section 3 of Article 13 of the procedural code states that “all local disputes that disrupt public order must be settled by the SCC, if one party of the dispute is a cleric.” However, if the dispute does not disrupt public order but is of a legal nature, and one party of the dispute is a cleric, the case can again be settled by the SCC. This is stated in Article 14 of the SCC’s procedural code: “Legal and civil suits involving clerics will be settled in accordance with the law at civil courts unless the prosecutor determines that it is an exceptional case that necessitates resolution by the SCC. In such instances, courts are responsible to refer the case [to the SCC].” So a dispute that does not disrupt the public order, according to Article 14 of the code may be settled at public courts unless for the exceptions stated above. This ambiguity in the jurisdiction of the court always works out to the disadvantage of the defendant and the advantage of the prosecutors; it allows the latter to evade the law and any accountability.

But the above distinction does not include high-ranking regime officials who are clerics, these men are always referred to the SCC. Clause 3 of Article 13 states, “All accusations against ministers and their deputies, parliament members, and members of the Expediency Council and Guardian Council, the heads and advisors of the three branches of government, ambassadors, governors, and (for public crimes) military and police commanders and officers from the rank of brigadier general and higher, and the heads of intelligence in provinces, if they are clerics, will have their case referred to the SCC; and all allegations against members of the Assembly of Experts and Friday prayer imams will also be referred to the SCC in Tehran.” This exception undermines the rule, particularly because the latter two positions are among the most critical and subject to constant surveillance by the SCC.

This means that the Supreme Leader’s office, via the SCC, hangs its Sword of Damocles perpetually over the heads of the regime’s high-ranking clerical officials. The smallest criticism of the Supreme Leader or any refusal to take orders from his office can immediately lead to prosecution at the Special Court.

Right to choose an attorney: The SCC’s procedural code makes no mention of the participation of lawyers in the judicial process of this court. Those accused by this court are not afforded the right to choose an attorney, and the cases where defendants appeared in court with an attorney have been instances of rare benevolence rather than based on a legal mandate. This stands in violation of Article 35 of the Iranian Constitution, which states that “both parties to a lawsuit have the right to appoint a lawyer in all courts and if they are not able to appoint a lawyer, facilities for appointing a lawyer shall be provided for them.”

Basis of court rulings: According to Article 167 of the Constitution, “A judge shall be required to try to find out the verdict of every lawsuit in codified laws; if he fails to find out, he shall render a verdict on the matter under consideration based on authentic Islamic sources or authoritative Fatwas. He may not refrain from dealing with the case and rendering a judgment on the pretext of silence, inadequacy or brevity of or

contradiction in codified laws.” This article limits judiciable laws to those that are codified or religious, and it eliminates the possibility of crimes conjured up outside of these sources. But a clause to Article 42 of the SCC’s procedural code opens the way for a judge to create allegations without a legal or religious basis: “In exceptional cases or those where a punishment has not been determined by law or religion, a judge can issue a ruling according to his rational judgment.”

Arraignment: No article in the SCC’s procedural code describes how and when defendants are to be informed of the charges against them. This is while Article 32 of the Constitution stipulates that charges must be announced and made clear to a defendant. In most arrests made by the SCC, this law is not observed. According to individuals who have been tried at this court, they were not informed of their charges: “The first day I was told that I must go to interrogation sessions and answer questions, not ask about the charges against me.”³⁴

A clause in Article 39 annuls this due process principle: “If the court learns of a problem in adjudicating new types of crimes, it is entitled to devise a ruling.” This clause is frequently used during trials to level new charges against defendants, who must defend themselves without having received prior notification of these charges. In many cases, even the original charges may not be told to the defendant. Usually, individuals are first arrested and told that they will be informed of the charges against during their interrogation.

Divine Rights: The SCC is an arbitrator on behalf of the Hidden Imam’s deputy on Earth (i.e., the Supreme Leader) and seeks justice against violations of the “rights of Allah.” Devout Iranians, according to their faith, are not only accountable to God on Judgment Day, but must also be accountable to God’s representatives at the SCC. Article 20 of the procedural code states that: “whether to prosecute those accused of violating Divine Rights is determined in accordance with religious principles; with respect to those who violate the private rights of individual citizens the decision is based upon whether a plaintiff files a complaint, and with respect to those accused of violating the public’s rights, the decision rests with the public prosecutor.” The earthly civil court can only review cases where private and public rights have been violated, but the SCC, as a divine court, can also take on cases involving the violation of divine law and seek justice on behalf of God.

It is unclear what punishment has been set by the SCC for violation of divine rights. For example, what is the punishment for missing a prayer, failing to go on pilgrimage, incorrectly performing ablutions, etc.? There is no court in the world that can expose such crimes or determine punishments for them. The utmost the SCC can do in this regard is to defrock the cleric based on reports received by the court’s informants, and even this has no precedent in any legal text or in the SCC’s own procedural code.

7. Function

The function of the SCC not only stands in violation of the Islamic Republic’s Constitution but has also repeatedly violated the court’s own procedural code. An institute that does not abide by its own code, written by itself, lacks the slightest credibility. Every section in every article of the procedural code that proscribes any deviation from the code regularly violated. The court’s prosecutors and judges, with the backing of the Supreme Leader’s office, can do as they please without any obstacle whatsoever.

The SCC’s lack of abidance to its procedural code can be proven in three specific areas: its jurisdiction, the jury, and the investigation of beliefs.

Jurisdiction: The prosecution of individuals who are not clerics or theologians and who are not related to the

34. Mohammad Javad Akbarin in an interview with Serajaldin Mirdamadi on Radio Zamaneh.com, Feb. 25, 2009. Zamaaneh.com.

cases of clerics is common at the SCC. Based on its procedural code, this court can prosecute individuals who are clerics or who are implicated in the case of a cleric,³⁵ but cannot try simply anyone directly at this court. However, Section D of Article 13 of the code refers vaguely to the right to prosecute anyone who falls under the jurisdiction of the SCC or “any affair that is commissioned for review by the Supreme Leader.” However, in cases in which individuals not recognized as clerics and not implicated in a cleric’s case have been prosecuted at this court, there has never been any sign that the Supreme Leader had commissioned the case.

The number of lay people who have been summoned to the SCC is countless. Meanwhile, clerics with similar charges to other clerics tried at the SCC are tried instead in the Revolutionary Courts. Here, I will cite two instances: The SCC at Hamadan and the Revolutionary Court at Mahabad subpoenaed 21 members of the religious group known as “Quran School” from several Kurdish cities. Both judicial centers stated the charges against these religious group members as “creating unlawful gatherings by holding religious rituals.”³⁶ Khatami-era vice president Mohammad Ali Abtahi was tried, along with other political figures arrested in the wake of the tenth presidential elections, at the show trials held by the Revolutionary Court.

Jury: The SCC in the 1980s and early 1990s always held trials without a jury. From the mid- 2000s, the court reverted to its former state and eliminated the jury. The SCC held trials with a jury only for press offenses. Political offenses are tried without a jury, as is the general rule for courts in Iran. According to Article 44 of the SCC’s procedural code, the jury is appointed: “The members of the jury for the Special Court of the Clergy shall be 14 persons selected by a committee composed of the SCC Prosecutor General, the head of the SCC’s First Branch, the head of the Islamic Promotion Organization, one representative from the Supreme Council of the Seminaries, and clerics employed in cultural, academic, judicial, bureaucratic, and other related fields. These members will serve on the jury for two years and their orders will be issued through the head of the SCC’s First Branch.”

Investigation of Beliefs: The SCC’s subpoenas and interrogations clearly prove the unlawful investigation of beliefs. Article 23 of the Constitution states, “The investigation of one’s beliefs shall be prohibited. No one may be offended or reprimanded simply because of having a certain belief.” Yet, defendants are interrogated by the SCC about their belief in Rule of the Jurisprudent, Chastity of the Imams, Intercession of the Prophet’s Household, the Hidden Imam, and other such concepts.³⁷

A notable instance of the investigation of beliefs is the subpoena and interrogation of clerics who are close to dervishes, and who attend dervish ceremonies. The clerics listed below were pressured and harassed by the SCC for such reasons: Mehdi Manteqi-Gooya was defrocked on charges of attending dervish ceremonies and insubordination to orders from the Intelligence Ministry and the SCC; Sabri was subpoenaed by the SCC on charges of attending dervish ceremonies and threatened that future attendance would place him on the “black list” of clerics and thus deprive him of clerical rights; Seyd Masoud Sadjadi was defrocked on charges of engaging in dervish practices after repeated summonses to the SCC and Intelligence offices. The following clerics who attended dervish ceremonies were threatened with physical violence and warned that their continued attendance would lead to their defrocking: Babak Taghian, accused of engaging in dervish practices; Seyd Azizollah Qaemi Tabatabaei, accused of failing to denounce dervishes to intelligence officials; and Mehdi Kiai, accused of delivering sermons to dervishes.³⁸

35. According to Article 31 of the procedural code, “Charges against the deputies and associates of clerics under investigation will be reviewed by the Special Court for the Clergy.”

36. Oghianos.blogspot.com

37. *Id.*

38. Didgah.net

