The Iranian Legal Response to Covid-19: A Constitutional Analysis of Coronavirus Lockdown

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24.04.2020 doi: 10.17176/20200424-164907-0

Iran has reported more than 82,211 cases and nearly 5,111 deaths from COVID-19 as of 19 April 2020. Iran is at the heart of the Middle East coronavirus outbreak, and one of the characteristics of Iran's coronavirus is the large number of senior government figures who have caught the coronavirus. Public gatherings, including Friday prayers in Tehran and other major cities, have been canceled. Schools and universities have been closed, and crews of cleaners have been dispatched to disinfect public places such as trains, buses, shrines and other public places.

In its early stages, the COVID-19 crisis in Iran looked nothing like a crisis. The initial reactions to the outbreak were met by skepticism by both the public and many of Iranian officials – despite the World Health Organization warning of the potential for a catastrophe for weeks. Indeed, in late February Iran's deputy health minister – Iraj Harirchi who denied accusations that the government was downgrading the coronavirus outbreak in the country – has reportedly tested positive for the sickness.

Similar reactions were repeated across Iran from the officials, and exemplify confirmation bias – a tendency to seize upon information that confirms our preferred position or initial hypothesis. The confirmation bias led to flawed decision making, and more cases than any other Middle Eastern countries.

Timeline of Coronavirus Pandemic and Iran's Response

Feb 19	The health ministry announced two people tested positive for COVID-19 in the holy city of Qom, and they have passed away.
Feb 20	Three new cases were reported. Two of them were from Qom and one from Arak.
Feb 23	Health Minister Saeed Namaki said that one of those who died was a merchant from Qom who traveled regularly using indirect flights between China, and Iran after direct flights were suspended between the two countries, and may have brought the virus from China.
Feb 24	Iran's Health Ministry reported 61 cases and 12 deaths.
Feb 26	Iranian president Rouhani said that there were no plans to quarantine areas affected by the outbreak.
March 2	The government announced plans to mobilize 300,000 Revolutionary Guards to combat the spread of the virus, as well as to deploy drones and water cannons to disinfect streets.
March 4	The coronavirus had spread to nearly every province.
March 8	Despite the request of Iranian lawmakers the

	mandatory quarantine of Tehran, Qom and other infected cities was denied.
March 13	A plan was announced to clear streets, shops, and public places by the Revolutionary Guards.
March 24	Iran granted furloughs to 85,000 prisoners.
April 1	Rouhani claimed that "Iranians had done "great work" and that the outbreak appeared to be receding in all provinces". He said that "Iran had been more successful than other countries at controlling the virus."
April 7	Iran's parliament reconvened for the first time since February 25. More than two-thirds of lawmakers gathered for the parliament session. They rejected an emergency bill for a one-month nationwide lockdown.
April 12-18	The government lifted the restriction on travel between cities within the same province, and Low risk businesses, including shops, factories and workshops reopened.

Emergency Powers and Iranian Constitution

When discussing constitutions in Iran, keep in mind the relationship between the state and the concept of justice is derived from the religious principle of Islam. The *sharia*, the general and particular rules of Islamic *corpus juris*, is not just a code of law but a code of conduct of behavior and ethics, a combination of law and morality, inseparable.

In Islamic nations there are three different models of constitutions. The first constitutional component reflects Islam as the official religion of the country, and some part of their legal system is based on Islamic law (e.g. Malaysia). In almost all majority-Muslim countries, family law, including marriage, divorce, custody, and inheritance, are shaped by Islamic standards. Second, in some constitutions of Islamic countries *sharia* or Islam is a source of law (e.g. Morocco). Iran follows the third model. In the third group, Islam is the main source of the law, and the constitution of requires any law passed by a legislature may be allowed to exist if its not in violation of sharia law. These provisions are called repugnancy clauses.

The Iranian Constitution provides little guidance on what a state of emergency is and what its terms could be. Article 79 of Iran's Constitution states:

> *"The proclamation of martial law is forbidden. In case of war or emergency conditions akin to war, the government has the right to impose temporarily certain necessary restrictions, with the agreement of the Islamic Consultative Assembly. In no case can such restrictions last for more than thirty days; if the need for them persists beyond this limit, the government must obtain new authorization for them from the Assembly."*

In Iran in the middle of the coronavirus pandemic we are witnessing a lack of emergency measures. Hassan Rouhani, the Iranian president who has undermined the power of constitutionalism does not want to use the emergency powers to fight with COVID 19. In Iran we have witnessed major contradictions between the views of the President and Iran's supreme leader, minority of lawmakers and medical experts, about how to control the spread of COVID-19, and the use emergency powers. They have even been criticized the Rouhani administration for ignoring the Crisis Management Law that the (Iranian Parliament) Majles passed in August 2019, and handed over to the administration for implementation.

Any Legislation in Response to COVID-19?

The enactment of legislation is only the first step in an effective, constitutional, public-health response to infectious disease outbreaks. The means for implementing and enforcing the laws efficiently must also be in place to achieve the desired results of disease control and minimal violation of individual rights. The rights of people have been mentioned in Chapter Three of Iran's Constitution. Although Articles 19 to 42 of the Constitution have covered the majority of individual rights, and the Constitution of Iran contains many important safeguards of rights and freedoms that are guaranteed in the international instruments, in statutory laws of Iran, and in practice individual rights have been violated. Vague and overlapping laws after the spread of coronavirus in Iran have led to violation freedom of expression and crackdown of press.

The Iranian parliament (*Majles*) rejected an emergency bill (triple urgency) for a one-month nationwide lockdown to control the spread of the coronavirus epidemic, which was based on Article 79 of Iran's Constitution. In its first meeting in the new Iranian year on Tuesday April 7, lawmakers rejected the proposal because it "undermines the Constitution", and it's in violation of Article 4 of Iran's Constitution that states :

> *"All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the fuqaha' of the Guardian Council are judges in this matter."*

Islam is the main source of the law in Iran, and the Constitution requires any law passed by a legislature may be allowed to exist if its not in violation of *sharia* law. These provisions are called repugnancy clauses. It means Iran Constitution make Islamic law supreme law of the land, and any laws contradicts with *sharia* will be void.

Although the imposition of national lockdown by Iranian parliament could contradict with *freedom* of movement the rejection of this triple urgency bill shows that the Iranian Parliament preferred the value of the people's lives over saving the country's economy and *sharia* law principles. The holy city of Qom in Iran is the epicenter of coronavirus. Qom long has been the stronghold of Iran's Shiite clergy. Qom is considered holy in Shi'a Islam, as it is the site of the shrine of Fatimah, a Shiite saint. People pray there every day, touching and kissing the shrine. The holy city at the center of the outbreak, visited by millions of Shia Muslim pilgrims every year.

But in Qom and elsewhere in Iran, the shrines stayed open at the beginning of crisis despite civilian health authorities demanding they close. Shiite clergies believe closing shrines was part of a plot against Shiites by enemies of Islam. The government came under severe criticism when it had earlier chosen not to close the shrine in Qom. Although the government eventually closed shrines, and banned cultural and religious gatherings, it has not imposed complete lockdowns on holy city of Qom so far.

Is Partial Lockdown a Failure?

Iran's government has adopted partial lockdown to combat with coronavirus, including a range of measures to limit the spread of the virus, including closing schools, malls, markets and shrines, banning cultural and religious gatherings, releasing a high number of prisoners to fight contagion in prisons, and warning Iranians against traveling has been announced by National Coronavirus Committee at the Interior Ministry, and the details of restrictions will be updated weekly.

The Iranian government dealt with the COVID-19 pandemic by issuing a series of decrees that gradually increased restrictions within lockdown areas. In normal times, this approach would be considered prudent. In this situation, it was inconsistent with the rapid exponential spread of the virus. As a result, Iran *followed* the spread of the virus rather than *prevented* it.

On March 25, president Rouhani announced a partial lockdown, closing businesses and government offices for two weeks and banning travel between different cities. But, concerned about the economic damage from the outbreak, the government recently ordered a step-by-step reopening of businesses that it considers to be low risk in terms of spreading the virus. Iran has started soft reopening, and shopping malls reopened from Monday, April 20, and Tehran's main bazaar reopened after more than a month and restrictions on travel between provinces were eased. Also, the parks and beauty salons will be open soon, but Mosques, shrines, restaurants, gyms and other locations remain closed after earlier being suspected of being a transmission source for the virus.

Finally, it should be recognized that there is no balance point between protecting society from COVID-19 by imposing national lockdown, and protecting constitutional rights of people. Rather, the balance point fluctuates according to the situation at hand. Therefore, it is unlikely that if the future of human society were at risk, priority would be given to individual's constitutional rights. Iran has relaxed social distancing rules in the face of concerns that as many as 7 million Iranians had been left jobless or suffering wage cuts because of the restrictions imposed by the government over the last month not because of individual rights. Although this decision might lead to second coronavirus outbreak and loss of lives from COVID-19.

Coronavirus and Iranian Criminal Justice System

The novel coronavirus has disrupted Iranian criminal justice system, and could delay the right to a trial, robing (although temporarily) detainees of their day in court. The outbreak of COVID-19 has overwhelmed dockets in courthouses in Iran, and it has led to delays and an expanding backlog of cases. Many criminal and civil courts suspended or postponed their trials or they are planning to finish pending criminal and civil trials while delaying new trials until further notice.

Some courts could limit exposure to the virus by encouraging hearings through video or teleconferencing. Based on Iran's Judiciary guidelines priority is proceeding of violent crimes, corruption, crimes against public security, and crimes related to COVID-19.

People accused of more serious crimes are often held in custody, which will compound existing problems as more defendants enter jails. Overcrowding in prisons could have a broader impact on the public health, and one of the greatest at-risk populations are prisoners. Iranian criminal justice system has done a range of preventive measures including cutting the number of people being sent to jail and allowing some inmates out on temporary early release to limit the further spread of the disease within prisons.

On March 9, around 70,000 prisoners were temporarily released to limit the further spread of the disease within prisons. On March 10, more than 54,000 prisoners were temporarily released. On March 17, about 85,000 prisoners were temporarily released due to the coronavirus, and two days later the government announced plans to pardon 11,000 prisoners, including those charged with political crimes.

As a result of pandemic prisoners in Hamedan rioted and escaped. Prisoners in the city of Mahabad in Kurdestan province, also attempted to escape. On March 30, there was a prison riot in the south of the country, and some prisoners have been killed. Although some prisoners have been released, violent offenders and security cases, dual nationals and others with Western ties are still behind bars. A report issued by Amnesty International on April 9 indicated that during the protests, around 35 inmates were killed and hundreds wounded.

Although executions have been suspended in many retentionist countries due to the pandemic, coronavirus has not postponed executions in Iran. Meanwhile, Iran executed a death-row prisoner who had allegedly led a mass prison escape after fears of a coronavirus outbreak led to riots in several prisons.

Unbalanced Civil-Military Relations

Responses to COVID-19 has shifted the balance of power between militaries and civilian authorities. In Iran the military is being called upon to enforce lockdowns, and help the crisis response. Unbalanced civil-

military relations may open the door to increased military involvement. When military leaders have significant decision-making authority and involvement in managing the coronavirus response in Iran, the pandemic might lead to strengthening military actors' role in political decision-making. The Islamic Revolutionary Guards Corps (IRGC) are in charge of quarantines in Iran. Iran's Constitution dual power structure (a religious supreme leader controlling the armed forces, and a president heading a civilian administration) has left management of the epidemic without a clear commander.

Iran's religious supreme leader, Ayatollah Ali Khamenei issued a written order asked Maj. Gen. Bagheri, the commander-in-chief of the Joint Armed Forces (the army, the Revolutionary Guards and security forces) to take charge of coronavirus crisis by enforcing the lockdown, and to combat the spread of the virus, as well as to deploy drones and water cannons to disinfect streets. No time limit to this power has been stated. While the military needs to work with the civilian government, Khamenei effectively authorized it to sideline president Rouhani's government if needed. Rouhani refused, arguing that his government has no resources to support millions of people under lockdown. Basic services could collapse, he said, hurtling the nation deeper into crisis.

While extraordinary measures suggested by Iran's supreme leader are needed to halt the coronavirus pandemic, and president Rouhani's policy in fight with the pandemic was a failure, some are worried about violation of individual rights with the involvement of IRGC in lockdown, and designation of IRCG as a terrorist organization by United States and its allies.

Conclusion

There is still uncertainty on what exactly needs to be done to stop the coronavirus. Several key aspects of the virus are still unknown. We need to accept that a conclusion of what solutions work is likely to take several months. Although, emergency powers may be needed to respond to this public health emergency. But an emergency situation is not as excuse to disregard human rights obligations, and detain journalists in violation of freedom of expression. Some individual rights such as political rights, right to education, right to liberty and freedom of movement might be impacted, but at the same time, careful attention should be given to human rights principles such as non-discrimination and transparency and respect for human dignity to foster an effective response to coronavirus.

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SUGGESTED CITATION

Alasti, Sanaz: The Iranian Legal Response to Covid-19: A Constitutional Analysis of Coronavirus Lockdown, Verfassungsblog, 24.04.2020, doi: 10.17176/20200424-164907-0.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20200424-164907-0.