Critiques of the Guardian Council in the Process of Shari'a Supervision over Laws and Regulations

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Abstract

The practice of the Guardian Council in reviewing the enactments of the Islamic Consultative Assembly (Parliament) with respect to Shari'a is as follows: all articles or provisions of bills are examined individually in light of jurisprudential principles, and any provisions found to be in conflict with Shari'a are returned to the Parliament for amendment. Accordingly, the purpose of the present study is to examine the critiques raised against the Guardian Council in the process of Shari'a supervision over laws and regulations. This study employs a descriptive-analytical method, relying on library sources. The analysis revealed that opponents of Shari'a supervision have developed their arguments on the basis of Imami theological principles in two entirely distinct and separate ways. Some critics maintain that the institution of supervision is in direct contradiction with the foundations of legitimacy and governance in Islam, arguing that popular control is incompatible with the philosophy of Imamate, particularly the doctrine of Velayat-e Faqih (Guardianship of the Jurist). The other group does not reject the principle of supervision in the structure of a religious government but rather argues that the Guardian Council's supervision is inconsistent with religious elements. In general, it can be stated that the critique directed at the supervision of jurists (the Hayʾat-e Ṭarāz) over the enacted laws of the Parliament lies in the fact that no reliable Islamic source confirms that in customary, political, or governmental matters, five jurists must examine whether there is any contradiction with Shari'a rulings. Furthermore, neither the Constitution nor other laws foresee that authorities or individuals can request the Guardian Council to examine and issue an opinion on the conformity or non-conformity of an enacted law with the Constitution or with Shari'a principles. Likewise, such authority has not been explicitly granted to the Guardian Council itself.

Keywords: Guardian Council, Shari'a supervision, laws and regulations, Islamic Consultative Assembly (Parliament)

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1. Introduction

In the Islamic Republic of Iran, sovereignty is rooted in Islamic guidance and, through this path, returns to the people. The state is merely an executive agent and cannot stand against the nation or override the public interest. At the same time, according to Islamic law, since sovereignty is granted to the nation by God, its exercise is restricted to divine commands and cannot transgress them. This limitation itself serves as a strong deterrent (Herisi Nejad, 2018). Based on these considerations, it becomes clear that government and sovereignty in Islam embody a concept distinct from interpretations in other systems. An Islamic government does not resemble conventional forms of governance in the world; rather, it is a trusteeship intended to lead the Islamic society toward its divine goal. In completing this concept, Article 56 of the Constitution of the Islamic Republic of Iran stipulates: "Absolute sovereignty over humanity and the world belongs to God, and He has made man the ruler of his social destiny, and no one can deprive man of this divine right, nor place it at the service of an individual or a specific group." This principle permeates the entire fabric of the Islamic society. In such a government, the ultimate aim of sovereign power is to regulate the rights of citizens and officials in a way that facilitates the implementation of divine ordinances. By ensuring the precise observance of these rights, no divine command is suspended, no corruption is introduced into religion, and no tradition of God is abandoned. With reliance on the sound precepts of sacred Islamic law and logical deductions from religious foundations, government directs society toward salvation (Yazdi, 2016).

Accordingly, sovereignty in the constitutional law of the Islamic Republic of Iran—derived from Islam and the Ja'fari Twelver school—assumes a form entirely different from that of other countries. On one hand, sovereignty accepts and emphasizes Islamic principles, while on the other, it acknowledges the sovereignty of the people and manifests it uniquely within the framework of Islamic rules (Motahhari, 2019). Legislation in Islamic parliaments is considered comparative legislation rather than original legislation. The task of Parliament is to adapt the general provisions of Shari'a to specific external issues. Representatives are not permitted to enact laws that contradict Shari'a norms. In fact, Parliament in the Islamic system functions as a planning body to ensure the better implementation of Islamic laws. It is precisely at this juncture that the issue of the Guardian Council and the necessity of its existence arises. This Council may be understood as a kind of safety valve, serving as the link between popular sovereignty and divine sovereignty, such that if the enacted programs of the Islamic Consultative Assembly contradict divine law, the Council prevents their execution through timely supervision and paves the way for their amendment, thereby ensuring that laws and regulations in society conform to divine law.

In the Islamic Republic of Iran, inspired by the doctrine of French constitutional law—which has never favored judicial review of legislation—and based on the principle of equality among the three branches of power, it has been argued that to monitor and ensure the conformity of laws and regulations with the Constitution, a fourth power independent of the three branches should be established. Assigning such extensive oversight to the judiciary and expecting practical effectiveness from it is not a simple task. Since safeguarding respect for the Constitution is essential, entrusting this responsibility to judges could easily expose it to threat. If judges were able to suspend the enforcement of a law on the basis of the Constitution without any external oversight, this would ultimately diminish the authority of the Constitution itself (Yazdi, 2016).

In the Iranian legal system, according to Articles 4 and 91–96 of the Constitution, ordinary laws passed by Parliament must be consistent with Islamic principles. The authority to determine such conformity lies with the jurists of the Guardian Council, who, relying on their expertise and awareness of the exigencies of time and place, review the enactments of Parliament for compatibility with Shari'a. Accordingly, the purpose of the present study is to examine the critiques directed against the Guardian Council in the process of Shari'a supervision over laws and regulations.

2. Reasons for Considering the Predominant Fatwa as the Criterion

"The justice of jurists prevents them from issuing a fatwa without knowledge, and we have no evidence of their error." Naini, in his book *Tanbih al-Umma wa Tanzih al-Milla*, justified acceptance of the majority opinion as the basis for parliamentary decision-making at the time, arguing that "the majority, in cases of indecision, is among the strongest types of preference." That is, when the issue revolves between two positions—one supported by the majority and the other by the minority—and we do not know which should be adopted, the majority itself is considered a strong reason to prefer the view defended by most. This reasoning by Naini is defensible, and one may argue that the *famous fatwa* (fatwa endorsed by most

jurists) should be preferred over the non-famous fatwa, since it represents the opinion of the majority of jurists, and majority preference (*al-akthariyya 'inda al-dawaran*) constitutes a strong type of rational preference (Yousefi, 2018). However, the critiques of relying on the *famous fatwa* as a legal criterion are presented below.

First, appealing to the justice of past jurists is problematic because the knowledge of each individual is authoritative only for himself, not for others. A proof that was valid and binding for one jurist may not be valid for another. Second, the existence of justice does not eliminate the possibility of error, since past jurists could have erred in their jurisprudential reasoning.

If one appeals to the principle of *shura* as one of the arguments for the authority of the *famous fatwa* (as suggested by Sayyid Mohammad Shirazi), the response is that relying on *shura* is not a complete argument for proving the authority of the majority fatwa. First, regarding the Qur'anic verse *"wa shawirhum fi al-amr, fa idha 'azamta fatawakkal 'ala Allah"* (consult them in the matter, then when you have decided, put your trust in God), there is disagreement on whether consultation itself is obligatory, or whether acting upon the majority view is required. The prevailing view is that only the consultation itself is enjoined, while the final decision rests with the ruler, not with the majority. Second, *shura* applies primarily to social matters in areas where there is no explicit divine text (*ma la nass fihi*). Where there is a binding text from the Shari'a, consultation does not apply (Bashiriyeh, 2018; Sanei, 2012).

From Naini's perspective, the task of parliamentary representatives is legislation in cases where no Shari'a ruling exists, in other words, in the domain of *ma la nass fihi*. More precisely, the scope of parliamentary legislation is restricted to issues where no fatwa exists. Accordingly, preference for the majority opinion applies only in this limited domain, and one cannot infer that Naini considered the *famous fatwa* itself as a legislative criterion. Furthermore, reference to other passages in *Tanbih al-Umma* shows that Naini neither intended to establish such a principle nor agreed with it; rather, he opposed it explicitly (Danesh Kia, 2009).

In principle, the *famous fatwa* cannot always serve as the most effective basis for Shari'a supervision. The issue of "carrying out *qisas* (retribution) in cases where paying additional *diyya* is impossible" illustrates the variability of fatwa standards in legislation. Jurists have expressed two positions regarding the rights of the victim's family when *qisas* requires paying additional *diyya*. The first, supported by the majority, holds that the right of the victim's family is confined to enforcing *qisas* upon repayment of the additional *diyya*, and any conversion of *qisas* into *diyya* requires the murderer's consent. The second, opposing the famous view, holds that the victim's family is free to choose between enforcing *qisas* with repayment of the additional *diyya* or accepting *diyya* without the offender's consent. In this regard, the legislator, in Article 11 of the Law on Hudud and Qisas (1982), did not follow the famous view, stipulating: "When a man kills a woman, the victim's family may either enforce *qisas* by paying half of the full *diyya* to the murderer or demand the woman's *diyya* from him." However, in Article 258 of the Islamic Penal Code (1991), the legislator adopted the famous view, granting the family the right to enforce *qisas* upon payment of half the *diyya* and permitting settlement with the murderer at an amount equal to, less than, or more than the *diyya*. Yet in Article 360 of the Islamic Penal Code (2013), the legislator once again rejected the famous view and returned to the 1982 standard, granting the victim's family the choice, even without the offender's consent, between enforcing *qisas* with repayment of the additional *diyya* or demanding the prescribed *diyya* (Abbasi, 2014; Madani, 2013).

With technological advances and emerging issues in society, many new matters arise with no jurisprudential precedent and no *famous fatwa*. In such cases, reliance on the majority opinion as the foundation for Shari'a supervision is not possible (Herisi Nejad, 2018).

As for critiques of using the fatwas of Guardian Council jurists as the legal criterion, several points are noteworthy. Since the beginning of the Revolution, the membership of the Guardian Council has changed significantly. These changes naturally result in shifts in the majority fatwa within the Council. When prominent senior jurists were present, their scholarly authority was so influential that when they defended a view, most other jurists accepted it, seeing the strength of its arguments. With their departure and the arrival of new jurists, dominant perspectives within the Council shifted. For example, at one time the prevailing view in the Guardian Council was that intellectual property rights had no legitimacy or that *ta'zir* punishments had to be carried out exclusively by flogging. Years later, with new members, the Council accepted *ta'zir* punishments without flogging, even without a necessity, thus adopting a more flexible stance (Kadivar, 2003; Rafsanjani Moghadam, 2009).

According to the Constitution, the duty of Guardian Council jurists is to "determine non-contradiction" with Shari'a principles, and "determination" (*tashkhis*) differs from "inference" (*istinbat*). *Istinbat* means independent derivation from

primary sources, while *tashkhis* simply means identifying whether one matter conforms to another. Therefore, invoking the Council's interpretive opinion regarding fatwas to establish the authority of Guardian Council fatwas is erroneous, because the interpretive opinion is ambiguous. In it, both terms "determination" and "jurisprudential opinion" are used, which differ conceptually. The former suggests technical expertise, while the latter implies independent ijtihad (Mehrpour, 2012).

The minutes of the Assembly for the Final Review of the Constitution also record debates on *fatwa as a criterion*. One interpretation was that the criterion fatwa would be that of the Guardian Council jurists. Yet this does not mean that the constitutional legislator intended such an outcome. In the debates, every member expressed views and proposals, and one cannot extract a definitive interpretation from a mere suggestion (Bahrami Ahmadi, 2004).

In principle, any governing authority, when entrusted with responsibility, tends to expand its jurisdiction. Regarding Shari'a supervision, Guardian Council jurists have attempted to broaden their authority, as reflected in their interpretive opinion on the fatwa criterion. Yet the Guardian Council's duty is confined to ensuring that laws contrary to Shari'a do not prevail in society. The question of which fatwa should serve as the Council's criterion is a matter defined by law. By adopting an interpretive theory, the Guardian Council has sought to extend its authority and engaged in indirect lawmaking, which is outside its jurisdiction, since the Council is solely a supervisory body, not a legislative one (Tabatabaie Motameni, 2018).

3. The Fatwa of the Supreme Leader and the Reasons for Considering It as the Criterion

This theory states that the standard for determining whether laws conform to or conflict with Islamic principles is the jurisprudential opinion (*fatwa*) of the Supreme Leader. His jurisprudential views and independent reasoning (*ijtihad*) are taken as the benchmark for assessing the Shari'a conformity of legislation. One argument for accepting this view is that, according to Articles 57, 58, 60, and 61 of the Constitution, the Leader holds the leadership of the Islamic government and exercises full supervision over the three branches of power. In a state governed by a single Leader, a unified law must prevail, and the condition for unified law is a unified *fatwa*. For this reason, the Leader—by virtue of his supreme position in the Islamic Republic—should, as much as possible, issue thoughtful and practical *fatwas* on significant and contemporary issues. A necessary precondition for this is the establishment of an institution to categorize and archive the Leader's *fatwas*, making them available to the Guardian Council jurists and the Islamic Consultative Assembly for the purpose of legislation (Abbasi, 2014; Mehrpour, 2011).

Furthermore, under Article 91 of the Constitution, the authority to appoint the Guardian Council's jurist members rests with the Supreme Leader. The Leader is the highest religious and political authority in the Islamic Republic, holding absolute guardianship (*velayat-e motlaqeh*) over all branches of government under Article 57 of the Constitution, while other institutions derive their legitimacy from him. According to Interpretive Opinion No. 251/13047 of the Guardian Council (December 26, 1984), the authority to determine the conformity of laws with Islamic principles rests, in jurisprudential terms, with the jurists of the Guardian Council (Hedayat Nia, 2013; Research Center of the Guardian, 2002).

A review of the Guardian Council's practice regarding the criterion *fatwa* shows that when reviewing parliamentary enactments, the Council first refers to the *fatwa* of the Supreme Leader. If no such *fatwa* exists, they refer to the *fatwas* of Imam Khomeini, and based on that, they render their opinion. If the issue is not addressed in either source, the jurists rely on their own *fatwas* (Kadivar, 2003; Rafsanjani Moghadam, 2009).

A critique of this theory is that it is not always the case that the *fatwa* of the Supreme Leader is the most effective or practical one. The jurist who assumes the position of leadership must possess qualities beyond jurisprudential expertise, which may indeed enable him to better identify societal challenges and issue more practical *fatwas*. However, this argument is disputable: possessing leadership qualifications does not necessarily guarantee the ability to issue the most practical *fatwa*. For example, Imam Khomeini's *fatwa* was that *ta'zir* punishments had to be enforced by flogging, and he did not permit alternative methods such as financial penalties (Motahhari, 2019).

Another objection to using the Leader's *fatwa* as the criterion is that, if accepted, every change in leadership would necessitate revising all laws enacted under the jurisprudential approach of the previous Leader. In other words, if the Leader's *fatwa* constitutes the legislative standard, then with each change of leadership, all laws must be aligned with the new Leader's opinions, creating a cycle inconsistent with the stability and durability of law (Bakhshayeshi Ardestani, 2016).

Moreover, the Leader's responsibilities extend beyond supervising the legislature; he must also oversee the performance of the executive and judiciary. The magnitude of these responsibilities prevents him from issuing *fatwas* on all emerging and important issues in society.

Finally, the Constitution itself does not indicate that the Leader's *fatwa* is the standard criterion. When the Constitution was ratified in 1979, it remained silent on this matter, and even in the 1989 constitutional revision, no reference was made to the Leader's *fatwa* as the criterion *fatwa* (Bahrami Ahmadi, 2004; Katouzian, 2007).

4. The Uncommon and Rare Fatwa

An uncommon (*shādh*) fatwa is one in which certain jurists issue a ruling on a subject in a way that contradicts the majority opinion. In this section, both the arguments for and against using such fatwas as a legal criterion are presented.

According to Article 96 of the Constitution, the determination of whether laws conform to Islamic principles rests with the Guardian Council jurists. The term "Islamic principles" in this Article is general and broad in scope. Since an uncommon fatwa is nevertheless issued on the basis of Islamic principles, it falls within this term and may be cited. Thus, the uncommon fatwa can be regarded as one of the Islamic principles. If the Guardian Council jurists in legislation were to consider only the majority opinions while disregarding uncommon fatwas, this would constitute an unjustified preference without sufficient reason. The constitutional legislator, in Articles 4, 91, and 96, has employed terms such as "Islamic principles," "Islamic rules," and "Shari'a," thereby expanding the Guardian Council jurists' authority to determine whether parliamentary enactments conform to Islamic norms. Moreover, a review of the Constitution shows that the constituent legislator did not prohibit the Guardian Council jurists from relying on uncommon fatwas in exercising Shari'a supervision. From this silence, one may infer that the uncommon fatwa is itself one of the Islamic principles and may therefore be applied by the Council (Bashiriyeh, 2018).

Critics, however, argue that the minutes of the Assembly for the Final Review of the Constitution contain no discussion of uncommon fatwas as a criterion. Such fatwas therefore have no real place in the legislative debates. If the Islamic Consultative Assembly were to rely solely on uncommon fatwas in drafting laws, it would ignore other effective jurisprudential opinions, resulting in a one-dimensional approach to legislation. Moreover, in some cases access to uncommon fatwas is not possible, placing legislators in hardship when drafting laws (Bahrami Ahmadi, 2004).

Another important concept is the *effective fatwa* (*fatwā-ye kārāmad*). An effective fatwa is one that aligns more closely with rationally understood public interests, carries greater capacity for solving individual and social problems, and harmonizes with fatwas that have already served as the basis for other laws. Since Shari'a rulings form an integrated system intended to establish justice and benevolence, an effective fatwa must be sought—one that best adorns the legal system of the Islamic Republic with Islamic features (Khosrowshahi, 2011).

In other words, depending on temporal and contextual circumstances, different fatwas—including majority fatwas, uncommon fatwas, or the Leader's fatwa—may serve as the legislative basis. Thus, Guardian Council jurists should not be confined to a single fatwa. Rather, the legal system must preserve their discretion to identify the most effective fatwa and apply it in their supervisory function. At the same time, the Islamic Consultative Assembly and the Guardian Council together form the legislative power. The Assembly, as the locus of expediency, enacts laws based on an effective and valid fatwa, while the Guardian Council jurists, in their supervisory capacity, apply their own jurisprudential reasoning with due regard for the exigencies of time and place. In this process, they assess which fatwa underlies the legislation. The key question, then, is: Which fatwa is most consistent with contemporary needs and least problematic in implementation? If we accept that the standard of Islamic validity in laws is their non-contradiction with Shari'a, then alignment with the fatwa of any qualified jurist—even if it opposes the majority view—is sufficient to render a law Islamic (Bakhshayeshi Ardestani, 2016).

The theory of the effective fatwa rests on two principles. The first is the presumption of validity of any fatwa issued by a fully qualified jurist (*mujtahid jāmeʿ al-sharāʾet*). The constitutional legislator, presuming jurists to be wise and rational, did not designate a single criterion fatwa. Instead, it required Guardian Council jurists to be aware of the demands of time and place, enabling them to issue prudent and rational opinions in line with national interests. This omission of a fixed criterion fatwa reduces social and legal ambiguities and expands the discretion of both the Parliament and the Guardian Council to legislate in accordance with social, economic, and political necessities (Abbasi, 2014). From this principle it follows that any

fatwa issued by a qualified jurist is jurisprudentially valid and free from defect. In other words, the opinions of jurists in an Islamic society may differ—some being majority views, others rare—but once the jurisprudential authority of a fatwa is established, it cannot be dismissed as illegitimate. An uncommon fatwa, if it secures social interest, may be more appropriate than the majority view.

Therefore, all fatwas of fully qualified jurists must be recognized as legitimate interpretations of Islam. If a jurist derives a ruling from Shari'a sources, even if it differs from the opinions of others, it cannot be deemed contrary to Islamic principles. Each fatwa is binding on the jurist and his followers and cannot be dismissed for political or economic considerations. Disregarding such fatwas on the grounds of rarity weakens the foundations of the Islamic community. On the contrary, respecting them strengthens and clarifies the Islamic order (Sanei, 2012).

The second principle is the flexibility of jurisprudence in legislation. In Islam, leading jurists (*foqahā-ye ṭarāz-e awwal*), by exercising *ijtihād* and utilizing the broad capacities of Islamic jurisprudence, have issued fatwas across most fields of *fiqh*, thereby granting the Islamic Consultative Assembly greater discretion in legislation. As has been observed: *"Is it not better to adopt a broader and deeper view of Islamic principles and rulings, and their underlying wisdom and philosophy, and to accept that Shari'a cannot prescribe a rule that conflicts with the interests of society or is unenforceable? Thus, we must approach secondary and social rulings with open-mindedness and sound interpretation, exercise ijtihād, and derive correct rulings to form the basis of legislation. The law must be as clear and understandable as possible, drafted with terms appropriate to the times, so that it may be easily understood, analyzed, and interpreted. The skill of the legislator lies in referring to jurisprudential sources, examining different juristic opinions, and selecting the most correct and socially appropriate ruling, clearly and definitively codified into law."*

This approach mirrors what some Islamic countries have done. For instance, the Civil Code of Kuwait (enacted in 1981) and the Personal Status Law of Kuwait (enacted in 1984) were drafted by legal experts who were well-versed both in the techniques of legislation and in jurisprudential principles. They considered the needs and interests of their society while consulting jurisprudential sources and drawing on comparative legislative experience. The result was the adoption of advanced and praiseworthy provisions while preserving compliance with Islamic principles. The Kuwaiti lawmakers themselves asserted that no article in these codes contradicts Shari'a.

A notable feature of these legislative efforts is that the drafters did not automatically follow the most common or popular fatwas. Instead, by applying *ijtihād* suitable to contemporary circumstances, they selected the most reasonable and justifiable opinions and codified them into law.

Two examples illustrate this approach:

1. **Usury and Delay Damages** – The Kuwaiti Civil Code, adhering to the Islamic prohibition of usury (*ribā*), stipulates in Article 5-3 that: *"Any agreement for interest on money or for compensation for delay in payment is void."* At the same time, it recognizes the fairness of compensating creditors when a debtor, despite having the ability to pay, unjustifiably delays payment. Article 206 thus provides: *"If the obligation concerns a sum of money, and the debtor, despite being able to pay, refrains from doing so, and the creditor proves that he has suffered extraordinary harm due to the delay, the court may, in light of justice, order the debtor to pay an additional amount."*
2. **Dissolution of Marriage for Defects** – Regarding the right to dissolve a marriage due to defects, the Kuwaiti Personal Status Law codified a fair ruling by granting either spouse the right to annul the marriage if the other party suffers from a serious defect. Article 139 provides: *"Either spouse who finds in the other a serious defect that is repulsive, harmful, or prevents marital relations may seek annulment of the marriage."* The legislative commentary explains that jurists differed on whether both spouses or only one had this right, and whether the list of annulment defects was limited or open. To prevent harm to either party, the legislator followed the broader opinion and, drawing on fatwas of some earlier jurists, granted the right of annulment to both spouses. The law defines qualifying defects as those that are repulsive, harmful, or prevent marital relations (Shamsa, 2012).

This principle of flexibility illustrates that jurisprudence is not a rigid structure but a dynamic framework, allowing legislators to reconcile Shari'a with evolving social needs and contemporary realities.

5. Ambiguities and Silent Points in the Constitution Regarding the Duties of the Guardian Council

According to Article 94 of the Constitution, all enactments of the Islamic Consultative Assembly must be referred to the Guardian Council for review regarding their conformity with the Constitution and Islamic principles. Thus, neither the Constitution nor other laws foresee that authorities or individuals can request the Guardian Council to review or issue an opinion on the conformity or non-conformity of parliamentary laws with the Constitution or Shari'a principles. Likewise, no such authority is explicitly granted to the Guardian Council itself (Danesh Kia, 2009). Occasionally, however, the Council indirectly enters this domain with regard to the un-Islamic nature of parliamentary laws. The pressing issue concerns pre-Revolution legislation: what should be done if such laws conflict with the Constitution or Shari'a?

Naturally, these laws must be reviewed, and consistent with the new Constitution and Islamic norms, they should either be amended or repealed by the Parliament. Based on Articles 42 and 61 of the Rules of Procedure of the Islamic Consultative Assembly, a special commission was established to review pre-Revolution and Revolutionary Council legislation, with the responsibility of proposing necessary amendments for introduction as bills or proposals in Parliament. However, this commission has not been particularly effective. To date, the Guardian Council has not claimed authority to review such pre-Revolution laws, unless they are referenced in new parliamentary bills. In such cases, when reviewing the parliamentary bill, the Council also comments on the referenced prior law (Mehrpour, 2012).

With respect to conformity with Islamic principles, the situation is somewhat different. Some argue that, under Articles 91 to 97 of the Constitution, the Guardian Council's duty to review and comment arises only once a bill has passed Parliament and is referred to the Council. Others contend that, in light of Article 4, which stipulates that all laws in every field must conform to Islamic principles and assigns the Guardian Council jurists as the authority for determining this, no law that contradicts Shari'a can be enforceable in the Islamic Republic. Therefore, pre-Revolution laws that conflict with Islamic norms cannot be applied. If the Parliament fails to review and amend such laws, Guardian Council jurists may announce their incompatibility with Shari'a and act accordingly (Mehrpour, 2011).

In the Islamic Republic, pursuant to Article 94, all parliamentary enactments must be referred to the Guardian Council, which must review them within the prescribed timeframe. If found inconsistent with Shari'a or the Constitution, the law is returned to Parliament; otherwise, it becomes enforceable. To expedite lawmaking, Council members may sometimes attend parliamentary sessions to voice their views on draft laws. The Guardian Council also supervises presidential, parliamentary, and Assembly of Experts elections and interprets the Constitution (Zarei, 1997).

Without doubt, Article 4 of the Constitution should be regarded as one of the most important—if not the most important—articles of the Constitution of the Islamic Republic. It may rightly be called the "Mother Article" because of its unique scope and function. First, its wording is distinctive: the second part of Article 4 declares that "this principle governs all the articles of the Constitution and all other laws and regulations." No other article contains such language, positioning Article 4 as the final arbiter over all constitutional provisions. Second, members of the Assembly of Experts also emphasized its centrality, noting in their deliberations that "this is the most important principle we are drafting, as it governs all other principles." Thus, based on Articles 4 and 94, all enactments—general, specific, delegated, interpretive, or budgetary—as well as parliamentary approvals concerning executive oversight (such as treaties and international agreements), must be sent to the Guardian Council. As the Constitution stipulates, without the Guardian Council the Islamic Consultative Assembly lacks legal validity (Research Center of the Guardian, 2002).

6. The Basis of Conformity

Article 4 of the Constitution assigns to the Guardian Council the task of determining the conformity of all laws and regulations with Islamic principles. Regarding the criterion for approval or rejection by the Council, different views exist. Some interpret Article 98 of the Constitution as requiring reliance on the jurisprudential opinions (*fatwas*) of the Guardian Council jurists. Others argue that the Constitution requires *a'lamiyya* (preeminent jurisprudential expertise) only for the Leader, not for Council jurists. For the Council, sufficient scholarly competence in issuing fatwas suffices, while the Leader, as the highest religious and political authority, may guide the Council's approach in identifying issues and national interests. Thus, it is not implausible that the Council's jurisprudential practice would align with the Leader's views (Hedayat Nia, 2013).

Nevertheless, in response to interpretive questions regarding Article 96, Guardian Council jurists have affirmed that their decisions are based on their own independent jurisprudential reasoning (*istinbāt-e shakhsī*) (Mehrpour, 2012).

On the matter of conformity with Shari'a, the diversity of juristic opinions is significant: jurists may issue differing rulings on the same matter, each supported by explicit reasoning. As such, the Constitution provides no definitive standard. Relying solely on the "majority opinion of jurists" is not a precise criterion. Moreover, because jurists openly articulate their arguments in jurisprudential works, the Iranian public has come to recognize that fatwas are not definitive reflections of objective truth, but rather, as jurists themselves emphasize, they "discharge one's obligation" (*mubri' al-dhimma*) and "remove responsibility," rather than reveal absolute reality (Bahrami Ahmadi, 2004).

In general, the determination of conformity or non-conformity of laws with Islamic principles rests, in jurisprudential terms, with the Guardian Council jurists (Mehrpour, 2011). However, in practice, when the Supreme Leader has expressed a clear jurisprudential opinion on a particular matter, the Guardian Council jurists do not issue a dissenting ruling. Instead, they align their determination with his fatwa. This practical approach, consistently followed in recent years, is also compatible with the Constitution, since the Leader is the highest religious and political authority in the Islamic Republic, holds absolute guardianship under Article 57, and directly appoints the Guardian Council jurists (Kadivar, 2003; Rafsanjani Moghadam, 2009).

7. The Possibility of Declaring a Law Contrary to Shari'a Despite Its Conformity with Some Valid Fatwas

If a law enacted by Parliament conforms to the fatwa of even a single recognized jurist, no one has the right to declare it contrary to Shari'a, even if only one authoritative jurist supports it. The legal basis for parliamentary enactments must be documented, and this foundation is the fatwa of a *marjaʿ al-taqlid* (source of emulation) (Kadivar, 2003).

Laws—whether substantive (defining rights and duties) or procedural (establishing mechanisms to implement rights and duties)—may be categorized as follows: (1) laws enacted prior to the establishment of the Islamic Republic and the Guardian Council's supervisory role, (2) laws that became enforceable because the Guardian Council did not issue a ruling, either positive or negative, within the 10-day period set in Article 94 of the Constitution, (3) laws that became enforceable following explicit approval by the Guardian Council, and (4) laws enacted under Article 112 of the Constitution by the Expediency Council (Rafsanjani Moghadam, 2009).

Article 96 of the Constitution provides: *"The determination of non-contradiction of parliamentary enactments with Islamic rules is entrusted to the majority of Guardian Council jurists, and the determination of their non-contradiction with the Constitution is entrusted to the majority of all Guardian Council members."* The reference to "parliamentary enactments" limits the Council's jurisdiction to laws passed by the Islamic Consultative Assembly and excludes pre-Revolution laws from its review authority (Elhami Nia, 1991).

Once a law has been approved by the Guardian Council, the presumption of its being contrary to Shari'a is untenable. In other words, Council approval equates to conformity with Shari'a. Articles 4, 91, 94, and 96 of the Constitution support this interpretation. Article 18(1) of the Amended Law on the Establishment of General and Revolutionary Courts (2006 revision) states: *"What is meant by 'contradiction with Shari'a' is contradiction with the indisputable principles of fiqh; in cases of disagreement among jurists, the criterion shall be the opinion of the Supreme Leader or the majority of jurists."*

However, this provision is ambiguous. The concept of *musallamāt al-fiqh* (indisputable principles of fiqh) is not precisely defined. Linguistically, *musallam* means something obvious or axiomatic, and *musallamāt al-fiqh* refers to self-evident jurisprudential principles requiring no deliberation. Yet the scope of these principles remains unclear and subject to interpretation. Another difficulty lies in the final part of the provision, which stipulates: *"In cases of disagreement among jurists, the criterion shall be the opinion of the Supreme Leader or the majority of jurists."* If this refers to disagreements among Guardian Council jurists, it may provide a workable guideline. But in the legislative context, the problem arises when one jurist deems a ruling contrary to Shari'a while another does not. Here, adopting the opinion aligned with either the Leader or the majority of jurists becomes the standard. Still, if the Leader's view differs from that of the majority, there is no clear rule, and the ambiguity persists (Mehrpour, 2012).

A further question concerns whether judges have the right to review the *procedural validity* of laws. For example, if a law is passed without the required parliamentary majority, may judges refuse to apply it? Those who recognize substantive judicial review usually also accept procedural review, reasoning that judicial independence requires judges to verify that enforceable rules actually have the status of law. Thus, even if judges cannot assess the merits of laws, they may determine whether proper legislative procedures were followed (Katouzian, 2007). By contrast, some jurists argue that minor procedural irregularities in ordinary legislation, if passed and promulgated according to law, cannot justify judicial refusal to apply them. Only when procedural defects are so fundamental that the act cannot be deemed a law at all—for example, if a law is promulgated without Guardian Council review—may a judge decline to enforce it (Madani, 2013).

From these discussions, it is evident that although the Constitution assigns the Guardian Council the responsibility of determining the conformity of laws with Shari'a, debate persists among legal scholars regarding the extent to which judges may review procedural compliance in legislation.

8. Conclusion

The aim of this study was to examine the critiques directed at the Guardian Council in the process of Shari'a supervision over laws and regulations. According to Article 4 of the Constitution of the Islamic Republic of Iran, Islamic principles stand at the top of the hierarchy of legal norms. Under this Article, the authority to determine the conformity of laws and regulations with Shari'a has been entrusted to the jurists of the Guardian Council. Although Article 94 provides for a preventive and active mechanism to ensure the Shari'a compliance of parliamentary enactments, the Constitution contains no explicit provision to guarantee the Shari'a conformity of administrative regulations such as by-laws and directives. While the mechanism of the Administrative Court of Justice seeking advisory opinions from the Guardian Council jurists—derived from Articles 4, 170, and 173—does exist, a large portion of administrative regulations escape Shari'a review either because they are not challenged before the Court or because they fall outside its jurisdiction. On the other hand, difficulties arise in reinstating the effects of annulled regulations declared void by the Court for being contrary to Shari'a. This raises the central question of the study: what is the optimal mechanism for Shari'a supervision over administrative regulations?

To address this, various mechanisms were analyzed. It was found that relying solely on the judicial review of the Administrative Court produces a significant gap, as many regulations remain beyond its reach. Direct Shari'a adjudication by Guardian Council jurists also does not provide a desirable model, given the absence of judicial tools and the Council's structural inadequacy to handle regulatory complaints, in addition to the recurring problem that some regulations are never formally challenged. Another possible mechanism is the preventive Shari'a supervision of regulations by Guardian Council jurists themselves. While this model offers the strongest guarantee of Shari'a conformity, its full implementation is hindered by the Council's limited capacity to oversee the vast number of regulations produced. Thus, preventive review should be limited to the most important regulations, consistent with the Council's resources, while alternative arrangements are devised for other regulations.

A complementary mechanism would be the creation of specialized committees composed of jurisprudential and legal experts operating under the supervision of Guardian Council jurists. A central committee above these expert bodies would be necessary to provide coordination, appellate review, and resolution of conflicting interpretations among Guardian Council jurists. To prevent disruptions in executive functions and public services, and in line with the principle of expediency in governance, such committee review should occur *post factum*—that is, after the regulation is issued—but in an automatic and proactive manner, not contingent upon complaints, thereby ensuring comprehensive supervision. For coherence with the broader legal system, regulations should first undergo a legality review, with non-conforming ones sent to the competent authority for amendment or repeal. Only once legal conformity is confirmed should Shari'a supervision be applied.

Criteria for selecting regulations for preventive or subsequent Shari'a supervision should include their hierarchical importance, territorial and organizational scope, substantive significance, the authority of the issuing body, and whether they fall outside the jurisdiction of the Administrative Court. Ultimately, the current legal system may require intervention by the Supreme Leader, through referral to the Expediency Council, to implement an optimal supervisory mechanism. Finally, it must be noted that the Guardian Council, through broad interpretation of its constitutional authority, has insulated itself from the oversight of other legal institutions—an approach inconsistent with principles of justice. In this sense, the Council resembles a

judge ruling in its own favor. In general, the Council's opinions in the first decade after the Revolution were more coherent and consistent with justice, but gradually its practice shifted toward partial, politically cautious decisions reflecting contemporary political conditions. Substantively, the Council's rulings have tended to expand the power of unelected bodies, progressively marginalizing the role of elected sovereignty.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

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References

Abbasi, B. (2014). *Foundations of Constitutional Law* (3rd ed.). Jangal Publications, Javidaneh.
Bahrami Ahmadi, H. (2004). The History of the Codification of the Civil Code. *Imam Sadegh University Research Journal*(24).
Bakhshayeshi Ardestani, A. (2016). *The Principles of Political Science* (4th ed.). Avaye Noor Publications.
Bashiriyeh, H. (2018). *Teaching Political Knowledge (Foundations of Theoretical and Foundational Political Science)*. Negah-e Moaser Publications.
Danesh Kia, M. H. (2009). Examining the Implementation of the Second Principle of the Supplement to the Constitutional Law. *Scientific-Research Quarterly of Islamic Revolution Studies*, *5*(16).
Elhami Nia, A. A. (1991). Primary, Secondary, and Governmental Edicts. *Journal of Educators*, *1*(3).
Hedayat Nia, F. (2013). The Guardian Council's Supervision of Laws and Regulations. *Ravaq-e Andisheh*(11).
Herisi Nejad, K. (2018). *Comparative Constitutional Law*. Aydin Publications.
Kadivar, M. (2003). The Guardian Council's Veto of Parliamentary Law. *Baztab-e Andisheh*(43).
Katouzian, N. (2007). Ethics and Law. *Quarterly Journal of Ethics in Science and Technology*(1 & 2).
Khosrowshahi, G. (2011). *Philosophy of Law* (11th ed.). Imam Khomeini Institute Publications.
Madani, J. (2013). *Foundations and Generalities of Law* (19th ed.). Payda Publications.
Mehrpour, H. (2011). Handout on the Constitutional Law of the Islamic Republic of Iran. Tehran: Faculty of Islamic Studies and Law, Imam Sadegh University
Mehrpour, H. (2012). *A Review of the Collection of the Guardian Council's Opinions* (Vol. 1). Kayhan Publications.
Motahhari, M. (2019). *An Overview of Islamic Sciences (Theology-Mysticism-Practical Philosophy)* (Vol. 2). Sadra Publications.
Rafsanjani Moghadam, H. (2009). A Comparative Study of the Guardian Council (Iran) and the Constitutional Council (France). *Human Sciences (Imam Hossein University)*(53).
Research Center of the Guardian, C. (2002). *A Collection of the Guardian Council's Opinions*.
Sanei, P. (2012). *Law and Society* (1st ed.). Tarh-e No Publications.
Shamsa, A. (2012). *The Anatomy of Power* (2nd ed.). Negaresh Publications.
Tabatabaie Motameni, M. (2018). *Administrative Law* (42nd ed.). SAMT Publications.
Yazdi, M. (2016). *The Constitution for Everyone* (3rd ed.). Amir Kabir Publications.
Yousefi, A. A. (2018). *The Nature of Enjoining Good and Forbidding Wrong*. Islamic Culture and Thought Research Institute Publications.
Zarei, M. H. (1997). An Analysis of the Link Between Administrative Law and Public Management Based on the Rule of Law. *Public Management Journal of the Management and Planning Organization*(38).