

Religious Minorities in the Islamic Republic of Iran and the “Right to Have Rights”¹

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Introduction

In this article, I will pursue the issue of what Hannah Arendt’s claim for the “right to have rights” means regarding the Islamic Republic of Iran (IRI) and its most endangered religious minority, the Baha’is. Since Iran was a signatory state of the *Universal Declaration of Human Rights* (UDHR, 1948) as well as the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948) and the *International Covenant on Civil and Political Rights* (ICCPR, 1966), it is bound to the rights alluded to all human beings mentioned in these treaties. Yet, constructing a “minority” – in this case the adherents of

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the Baha'i Faith – as either a “misguided faith” and “wayward sect” or as a “foreign-affiliated political movement” and “organized espionage ring,”² Baha'is are deprived of their moral and religious legitimacy and of their legitimacy as members of the polity. To make matters worse, Baha'is are unconditionally regarded as apostates because they are considered to have been Muslims or coming from former Muslim families. Consequently, their human rights – among them the freedom of religion –, their rights as citizens and as members of their faith, individually as well as collectively, must be demanded by international organizations like the United Nations. Because of their specific interpretation of (Shiite) Islam, prominent individuals like Āyatullāh Muntazirī (1922–2009)³ and his student Muḥsin Kadīvar (b. 1959) have made it clear that Baha'is should be considered Iranian citizens and that apostasy can only be punished in the hereafter. Even if both argue for freedom of religion, minority rights are not seriously taken into consideration as the majority – in this case the Twelver Shi'ite majority of the IRI – decide if the beliefs and utterances of a religious minority do insult Islam. Yet, Kadīvar recently published a text in Persian on his website giving an overview on the transformation of his perception regarding the Baha'is.⁴ As will be shown in this article, this reformist thinker has reached a position conceding the Baha'is their rights as citizens of the IRI and legitimizing them as members of a religious community.

²See M. Tavakoli-Targhi, “Anti-Baháism and Islamism in Iran,” in *The Baha'is of Iran: Socio-historical Studies* (New York, Routledge, 2008), 200–231, 259; R. Afshari, “The Discourse and Practice of Human Rights Violations of Iranian Baha'is in the Islamic Republic of Iran,” in Brookshaw and Fazel, *The Baha'is of Iran*, 232–277, 236; A. Pistor-Hatam, “Non-understanding and Minority Formation in Iran,” *Iran* 55 (2017): 87–98.

³Concerning Muntazirī's – who does not relate to the Human Rights Declaration – viewpoint on human rights and, more particularly, human dignity, see Sh. T. Hunter, “Islamic Reformist Discourse in Iran,” in *Reformist Voices of Islam: Mediating Islam and Modernity*, ed. T. Hunter (New York: Routledge, 2009), 61–62; C. Arminjon Hachem, *Les droits de l'homme dans l'islam shi'ite: Confluences et lignes de partages* (Paris: Les éditions de cerf, 2017), 101–150.

⁴Mohsen Kadivar, *bā bahā'iyān chih'gūna bar'khvurd kunīm?*, 22 August 2018, <http://kadivar.com/?p=15243>; *bā bahā'iyān chih'gūna bar'khvurd kunīm?* (با بهائیان چگونه برخورد کنیم؟)

Human Rights and the “Right to Have Rights”

Deeply affected by the consequences of the Second World War and the Holocaust, the political philosopher and political scientist Hannah Arendt maintained that the loss of the “right to have rights” inevitably led to losses affecting the essential characteristics of human life. According to Arendt, the “right to have rights” is equivalent to living in a system of relations where one is solely assessed according to one’s actions and opinions; it constitutes the right to belong to a politically organized community,⁵ and entitles everyone to be part of humanity: “Only in a completely organized humanity could the loss of home and political status become identical with being expelled from humanity all together.”⁶ Consequently, Arendt’s fundamental “right is the right of political inclusion.”⁷

Human rights, Arendt continues, could only be implemented in political communities:⁸ “The fundamental deprivation of human rights takes place first and above all in depriving a person of a place in the world which makes his [her] opinions significant and his [her] actions effective.”⁹ Those who were stateless or deprived of their citizenship, lost their civic rights and were in danger of being ignored and forgotten.¹⁰ Yet, if a state excluded so-called minorities and other parts of its population, it changed from a protector of rights into its foremost threat.¹¹ Arendt calls the perception of human rights as natural rights into question when asking whether rights existed independently of an individual’s unique political status, only originating in his or her personhood.¹² Rights did only occur in the human world; they originated

⁵Hannah Arendt, “The Rights of Man” in *Modern Review* 3, no. 1 (1949): 24–37, 30 (“Es gibt nur ein einziges Menschenrecht,” in *Die Wandlung* 4 (1949), 754–770, 760–61).

⁶Arendt, “Rights,” 30.

⁷F. I. Michelman, “Parsing ‘A Right to Have Rights,’” in *Constellations* 3 (1996): 200–208.

⁸Arendt, “Rights,” 37 (“Menschenrecht,” 766).

⁹Arendt, “Rights,” 29 (“Menschenrecht,” 760).

¹⁰Arendt, “Rights,” 33 (“Menschenrecht,” 765).

¹¹Ch. Menke and A. Pollmann, *Philosophie der Menschenrechte zur Einführung* (Hamburg: Junius, 2007), 19.

¹²J. Förster, “Das Recht auf Rechte und das Engagement für eine gemeinsame Welt: Hannah

in human relations and depended on human beings who mutually accepted their rights.¹³ Freedom and equality were constructs, invented by humans in order to master their living together. Accordingly, only humans were responsible for their implementation.¹⁴ As maintained by Arendt, political equality is based on the members of one group accepting each other as carriers of equal rights.¹⁵

By this means, Arendt's use of the term "right" at the beginning of her statement evokes a moral imperative: "Treat all humans as individuals who belong to a group of people and are entitled to be protected by them."¹⁶ Her use of "rights" in the second part of her statement, then, relies on this prior right of belonging. Since the members of a community are obligated to grant these rights to each other, they are called civil and political rights. Consequently, Arendt's use of "rights" implies a trilateral relation between an individual claiming his or her rights, other members of the group obliged to grant these rights, and the state and its authorities enforcing them.¹⁷

In December of 1948, "born out of the war that had just ended,"¹⁸ the UDHR was adopted by the United Nations. Apparently, Arendt's main critique, namely that human rights were perceived as natural rights, was left unheard. The experience of the Holocaust and the impulse to completely reject the racist ideology of National Socialism led to the fundamental statement that "all human beings are born free and equal in dignity and rights."¹⁹ Yet, the UDHR does refer to Arendt's claim for "the right to have rights," among them the substantial right of po-

Arendt's Reflexionen über die Menschenrechte," in *HannahArendt.net. Zeitschrift für politisches Denken/Journal for Political Thinking* 5 (2009). No page numbers given.

¹³Ibid.

¹⁴Ibid.

¹⁵S. Benhabib, *Die Rechte der Anderen: Ausländer, Migranten, Bürger* (Frankfurt a. M.: Suhrkamp, 2008), 66.

¹⁶Ibid., 63.

¹⁷Ibid., 63.

¹⁸J. Morsink, "World War Two and the Universal Declaration," *Human Rights Quarterly* 15 (1993): 357–405, 357.

¹⁹Ibid., 358.

litical inclusion in article 21 or the right to citizenship in article 15. The latter article directly refers to the situation of German Jews who lost their citizenship after the Night of the Pogroms in 1939.²⁰

Although Nazi Germany directed its aggressions towards various groups of people who may be called “minorities,” there is no article to be found in the UDHR dealing with their protection. On the contrary, the declaration as well as most of the following covenants are characterized by a clear focus on individual rights. Contrary to international legal instruments of the inter-war-period,²¹ the declaration as well as the *Convention on the Prevention and Punishment of the Crime of Genocide* leaves out minority groups. With the state as the basic political and the individual human being as its fundamental social unit, the group dimension of human existence is not taken into account.²² Attesting this “pivotal document” a “certain blindness about the connection that exists between the prevention of discrimination and the protection of minorities,”²³ Morsink is of the opinion that the UDHR has to be amended with an article regarding “the rights of members of religious, linguistic, and cultural minority groups.”²⁴

Were such an amendment added to the UDHR, what would its definition of “minorities” be? Of course, minorities are no primordial entities and are therefore constructed, meaning that whether a group is considered a “minority” in a given place at a given time depends on historical, political, social, religious and other circumstances. In a publication on minority rights published by the High Commissioner of the United Nations in 2010, it is evident that these rights are a critical issue. Referring to the *United Nations Minorities Declaration* of 1992 that was adopted by consensus, the authors relate to the fact

²⁰Ibid., 393.

²¹See, for example, the *Agreements on the Protection of Minorities at the Paris Peace Conference 1919*.

²²J. Morsink, “Cultural Genocide, the Universal Declaration, and Minority Rights,” *Human Rights Quarterly* 21 (1999), 1009–60: 1012.

²³Ibid., 1057.

²⁴Ibid., 1010.

that there “is no internationally agreed definition as to which groups constitute minorities.”²⁵ Any definition, it is said, had to include “both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority).”²⁶ Since 1977, when the then Special Rapporteur of the *United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities* had offered a definition:²⁷ “subjective criteria, such as the will on the part of the members of the group in question to preserve their own characteristics and the wish of the individuals concerned to be considered part of that group”²⁸ have been added. Even though, the important fact that a numerical majority can “find itself in a minority-like non-dominant position” is still relevant.²⁹ It is equally important that “the recognition of minority status is not solely for the State to decide, but should be based on both objective and subjective criteria.”³⁰ However, states who deny the existence of minorities on their territory may take matters into their own hands and define their specific criteria.³¹

Commenting on article 27 of the ICCPR,³² the Human Rights Committee states that “this article establishes and recognizes a right which

²⁵*Minority Rights: International Standards and Guidance for Implementation, United Nations Human Rights, Office of the High Commissioner, United Nations 2010, 2.*

²⁶*Ibid.*, 2.

²⁷“A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.” *Minority Rights*, 2.

²⁸*Ibid.*, 3.

²⁹*Minority Rights*, 2.

³⁰*Ibid.*, 3.

³¹R. Wolfrum, “Der völkerrechtliche Schutz religiöser Minderheiten und ihrer Mitglieder,” in *Religionsfreiheit zwischen individueller Selbstbestimmung, Minderheitenschutz und Staatskirchenrecht – Völker- und verfassungsrechtliche Perspektiven*, eds. R. Grote and T. Marauha (Springer, Berlin, 2001), 53–71, 56.

³²“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied their right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” *Minority Rights*, 15.

is conferred on individuals belonging to minority groups and which is distinct from, and additional to all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant.”³³ Even if one considers the rights of article 27 as individual rights, they might also benefit groups, since these rights can be exercised collectively.³⁴ Members of religious minorities need to have rights like a collective religious avowal, which support the forming and preserving of groups. Religious minorities need to be accepted as religious communities and should be protected by the state. They must have the right to establish and use places of worship and social institutions as well as educational institutions for laypersons and clerics. They should be able to interact with co-believers abroad and go on pilgrimage. Also, they need to provide their own cemeteries. Above all, religious minorities must have the right not to succumb to the rites and customs of other religious communities.³⁵

All things considered, it looks as if the rights of minorities and, as this is the subject of this article, religious minorities in particular, have finally been taken care of. This may very well be the case theoretically. Moreover, since many states did not only sign the UDHR, the *Convention on the Prevention and Punishment of the Crime of Genocide* and the ICCPR, they should be obliged to follow their rules. Yet, although the IRI has not resigned from the United Nations and has even signed some of its recent conventions on child protection and the rights of persons with disabilities, it does not grant the mentioned rights to its religious minorities unconditionally. Even the IRI, however, seems to regard human rights as a normative benchmark in the international community and responds fiercely to frequent criticism by the UN.

As I have already discussed the formation of religious minorities and the rights they are conceded by the constitution of the IRI elsewhere,³⁶

³³Ibid., 16. See also the text of the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1992, Ibid., 45–46.

³⁴Wolfrum, “Der völkerrechtliche Schutz,” 67.

³⁵Wolfrum, “Der völkerrechtliche Schutz,” 68.

³⁶See Pistor-Hatam, “Non-understanding.” As regards human rights in the Islamic Republic’s

here I will focus on the question whether one religious minority that is not accepted as such according to the criteria of the IRI has any rights at all. The case of the Baha'i Faith clearly is the litmus test regarding the human rights of religious minorities in Iran. Like other states that once signed and ratified the ICCPR, the Islamic Republic is bound by contract to integrate members of minorities into state and society through granting them identical exercise of their civic and political rights. Concurrently, its authorities should be prohibited to force any member of any religious minority to assimilate against their will.³⁷ However, Iran counts among the few states having been assigned a special rapporteur by the Human Rights Council. His annual reports allude to clear indications of considerable human rights violations in the country:

The Special Rapporteur [...] regrets that concerns remain around the situation of recognized and unrecognized religious minorities and that communities continue to report arrests and prosecution for worship and participation in religious community affairs, including in private homes. He raises attention to the situation of Bahai's due to the existence of systematic policies designed to discriminate, target, harass and economically deprive them of the right to a livelihood. The Special Rapporteur urges the authorities to recognize that freedom of religion or belief entails the freedom to choose a religion or belief, and that measures restricting eligibility for civil, political, social or economic privileges, or imposing special restrictions on the practice of other faiths, violate the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26 of the International Covenant on Civil and Political Rights.³⁸

constitution, see also A. E. Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, Col.: Westview Press, 1991), 80–85.

³⁷Ramin S. Moschtoghi, *Die menschenrechtliche Situation sunnitischer Kurden in der Islamischen Republik Iran. Probleme der Verwirklichung der Menschenrechte in einer stark religiös geprägten Rechtsordnung im Spannungsfeld zwischen Völkerrecht, iranischem Verfassungsrecht und schiitischem religiösem Recht* (Heidelberg: Springer 2010), S. 61.

³⁸Human Rights Council: "Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran," 10 March 2016, S. 21, <http://www.ohchr.org/EN/Countries/>

Do these accusations have any impact at all on the Iranian government and its institutions? Besides complete rejections of these accusations, of the UDHR altogether, and of the legitimacy of the special rapporteur, as already mentioned, there are also more sophisticated ponderings. In the following chapter, I will discuss first Muḥammad Taqī Misbāḥ Yazdī's (b. 1934) response to the UDHR.³⁹ Not only is he one of its strongest adversaries as well as an influential cleric partaking in the official discourse of the IRI, but he also counts among the few who have seriously undertaken to discuss the UDHR. Second, I will examine Muḥsin Kadīvar's considerations regarding human rights. In both cases, the focus will be on freedom of religion and apostasy because these are the most important subjects about the rights of the Baha'i minority in Iran.

Freedom of Religion: Two Antipodal Iranian Viewpoints

As already stated, the focus of this section will be on the publications of two authors, both Shiite clerics. Whereas the official discourse is greatly affected by high-ranking clerics like Misbāḥ Yazdī, reformist thinkers like Kadīvar "who operate within the bounds of traditional methods of interpretations of Islamic sources but offer a progressive interpretation of them"⁴⁰ could play a vital role in paving the way for human rights in Iran.

Misbāḥ Yazdī became prominent even outside of Iran when he supported former President Maḥmūd Aḥmadīnizhād (gov. 2005–2013) against his reform-minded opponents.⁴¹ In two volumes published in 1388sh/2009 and 1391sh/2012 respectively, Misbāḥ Yazdī discusses human rights with reference to Islam.⁴² As is to be expected, in his

AsiaRegion/Pages/IRIndex.aspx [5.11.2016].

³⁹Beginning in the 1960s, various Iranian clerics have commented on the UDHR, especially since 1979. See *Arminjon Hachem: Les droits de l'homme* (Paris: Les éditions de cerf), 74.

⁴⁰Hunter: *Islamic Reformist Discourse*, 86–87.

⁴¹J. Amuzegar, "The Ahmadinejad Era: Preparing for Apocalypse," *Journal of International Affairs* 60, no. 2 (2007): 35-53. See also A. Rahnema, *Superstition as Ideology in Iranian Politics: From Majlesi to Ahmadinejad* (Cambridge: Cambridge University Press, 2011), 76-77.

⁴²Although Iran participated in the compilation of the *Cairo Declaration on Human Rights in*

comments he affirms that on the subject of rules and regulations and the compilation of drafts of human rights, a legal system limiting human life to the here and now diverges fundamentally from a legal system that regards human life in this world as only transient.⁴³ Each human being, regardless of his/her conviction, ideas, religion or philosophy, everywhere in the world agreed to the same rules of the right to life (*ḥaqq-i ḥayāt*), to housing, to own property, and to work.⁴⁴ Consequently, mutual agreement existed in regard to the basic principles of human rights.⁴⁵ If these rights stood above all other national and international laws, signatory states had to guarantee that their countries did not enact any laws contradicting the UDHR.⁴⁶ Subsequently, every country would have to define the confines of, for example, freedom of religion as postulated in article 18. Were freedom of religion (*āzādī-i intikhāb-i mazhab*) and freedom of religious worship (*āzādī dar anjām-i marāsim-i mazhabī*) one and the same or did they exist independently? Certain religious rites involved rules and doctrines not compatible with the declaration. Hence, believers could be forced to follow religious obligations at odds with the freedom or even the life of other people. Misbāḥ Yazdī then inquires what the UDHR had to say to this while affirming the freedom of religion and the right to life at the same time. What, he asks, was more important, freedom of religion or individual freedom?⁴⁷

As Misbāḥ Yazdī puts it quite generally, rights meant that human beings were *conceded* rights. Yet, the main subject of discussion was a philosophical one: Where did these human rights stem from and what was their basis for jurisdiction?⁴⁸ According to Misbāḥ Yazdī, God's

Islam of 1990, Misbāḥ Yazdī is not concerned with this declaration at all.

⁴³M. T. Misbāḥ Yazdī, *Nigāhī guzarā bi ḥuqūq-i bashar az dīdgāh-i islām* (Qom: Kitāb'khāna-i madrasah-i faqāhat, 1388/2009), 39.

⁴⁴*Ibid.*, 44, referring to articles of the UDHR.

⁴⁵*Ibid.*, 44.

⁴⁶See art. 28 of the UDHR.

⁴⁷M. T. Misbāḥ Yazdī, *Nazarīye-i ḥuqūq-i islām* (Qum: Intishārāt-i Mu'assisah-'i Āmuzishī va Pajuhishī-i Imām Khumaynī 1391/2011) vol. 1, 246–47, i.

⁴⁸Misbāḥ Yazdī, *Nigāhī*, 44.

rights (*huqūq Allāh*) are at the core of all rights. Human beings, he says, are bound to fulfil their God-given obligations.⁴⁹ As the creator of the universe and of mankind, God was the only lawful sovereign. Therefore, God's rights were the source of human rights.⁵⁰ Human life originated in God and there existed no independent human right to life.⁵¹ Since life was God's gift, no one was entitled to take another human's life without His permission. However, Muslims could kill those who opposed the true religion in a hostile and begrudging way, fighting their enemies in *jihād*.⁵² Unfortunately, the UDHR only spoke of human rights (*huqūq*) although human beings also had obligations (*takālīf*). Rights and duties could not be separated from each other.⁵³

As stated by Misbāh Yazdī, the right to freedom of religion and expression equals apostasy. Articles 18 and 19 of the UDHR directly related to regulations found in every religion and especially in Islam concerning apostasy (*irtidād, bāz'gasht*). In signing the said declaration, the signatories had undoubtedly expressed that everyone should be allowed to abandon his or her religion in favor of a new one. Conversely, Islam's regulations regarding apostasy had to be defended against its enemies.⁵⁴

At the other end of the spectrum there is Muḥsin Kadīvar, one of the most outspoken critics of Khomeini's doctrine of *vilāyat-i faqīh* and of "traditional Islam" as he calls it. He received his permission to practice *ijtihād* from the already mentioned Āyatullāh Muntazirī. While spending time in prison for "propagating against the sacred system of the Islamic Republic of Iran,"⁵⁵ Kadīvar changed his position in regard to the Islamic government, to Islam and democracy as well as to Islam and human rights fundamentally.

⁴⁹Ibid., 52.

⁵⁰Ibid., 53–55.

⁵¹Ibid., 55.

⁵²Ibid., 110–11.

⁵³Ibid., 247.

⁵⁴Ibid., 93.

⁵⁵Y. Matsunaga, "Mohsen Kadivar, an Advocate of Postrevivalist Islam in Iran," *British Journal of Middle Eastern Studies* 34 (2007): 317–29, 318.

In an elaborate interview first published in the Canadian-based Persian journal *Āftāb* and later reprinted in Kadīvar’s book on human rights in 2008, he discusses human rights regarding Islam, referring both to the UDHR and the ICCPR.⁵⁶ As said by Kadīvar, there are several cardinal points in this context, the first among them being the lack of legal equality of Muslims and non-Muslims. After explaining the differences among various groups of non-Muslims according to Islamic law, he refers to the majority of those non-Muslims who do not have any kind of contract with Muslims.⁵⁷ Contrary to the acknowledged peoples of the book living under Muslim protection, their lives, their possessions, and their honour were not respected. According to the sharia, their blood could therefore be shed unpunished:⁵⁸ “Cleary, in traditional Islam human beings cannot claim rights simply because they are humans, that is independent of their faith and religion. In this respect, there are no innate rights (*huqūq-i zātī-i insān*).”⁵⁹ To prove his argument regarding the rights of non-Muslims, Kadīvar maintains that dignity was inherent in all human beings.⁶⁰ Since religious diversity and human divergence were God’s will, no one should be forced to become a Muslim.⁶¹ Muslims, Kadīvar continues, were in no way obligated to examine, chide, or punish other religions. This would be done in the Hereafter. It was up to God to examine and to punish, not to humans.⁶² Like his teacher Muntazirī and other scholars, Kadīvar

⁵⁶M. Kadīvar, *Ḥaqq an-nās: Islām va huqūq-i bashar* (Tehran: Kavīr, 1386sh/2008), 88. The book’s fifth edition was published in Tehran (Kavir) in 2014, even though he has been banned from publishing his work, including new editions. See Kadivar, *Gottes Recht*, 47. In another publication, Kadīvar refers to the *Cairo Declaration* which he calls discriminatory in five areas, among them the right to freedom of opinion and religion. Kadivar, “Human Rights,” 62.

⁵⁷See also J. Waardenburg, “Human Rights, Human Dignity and Islam,” *Temenos: Studies in Comparative Religion* 27 (1991): 151–82, 171.

⁵⁸*Ibid.*, 92.

⁵⁹*Ibid.*, 92.

⁶⁰*Ibid.*, 381.

⁶¹Kadīvar, *Ḥaqq an-nās*, 381; *Qur’an* 18:29, 11:118, 10:99. Here he is in accordance with Abdolkarim Soroush. See Arash Sarkohi, *Demokratie- und Menschenrechtsdiskurs Der Demokratie- und Menschenrechtsdiskurs der religiösen Reformen in Iran und die Universalität der Menschenrechte* (Bonn: Ergon-Verlag, 2014), 58.

⁶²Kadīvar, *Ḥaqq an-nās*, 381; *Qur’an* 22:68–69.

also points to the Qur’anic verse saying that Muslims were obligated to live in peace with those who did not fight against Islam.⁶³

The sharia, Kadīvar states, does not know human rights. In what he calls “traditional Islam” (*islām-i tārikhī*), Muslims had rights, but there were no inherent human rights present. Finally, even those rights guaranteed to the true believer were less than human rights.⁶⁴ Kadīvar argues that modern human rights norms are of “a supra-religious quality, being the end product of critical collective reasoning of humanity in the modern era.”⁶⁵ Therefore, they remain “unconditioned by any religion in the public sphere. Those rights have been laid down for humans as humans before they find [any] belief in this religion or that sectarian belief [...]. The philosophy of human rights is neither atheistic nor monotheistic.”⁶⁶

As far as freedom of religion is concerned, Kadīvar argues that everyone should be free to choose his or her religion (*dīn*) and way of life (*sabk-i zindagī*). Based on the Qur’anic verse (2:256), *Lā ikrāha fī d-dīn*, “No compulsion is there in religion,” Kadīvar says that if one considers another individual’s choice to be wrong, one does have no right to use force in order to convince him or her otherwise.⁶⁷ Equally, he defends the position of “absolute denial of earthly penalties for changing religion and belief.”⁶⁸ Instead of punishing apostates, the religious knowledge of believers should be strengthened.⁶⁹ Here, again, he agrees with his mentor Āyatullāh Muntazirī, maintaining that

⁶³Kadīvar, *Haqq an-nās*, 383; *Qur’an* 60:8–9.

⁶⁴Kadīvar, *Haqq an-nās*, 92–93. Here he agrees with Mohammad Shabestari. See Sarkohi, *Demokratie- und Menschenrechtsdiskurs*, 77, and Hunter, *Islamic Reformist Discourse*, 72.

⁶⁵Quoted in Y. Matsunaga, “Human Rights and New Jurisprudence in Mohsen Kadivar’s Advocacy of ‘New Thinker’ Islam,” *Die Welt des Islams/International Journal for the Study of Modern Islam* 5 (2011): 358–81, 379.

⁶⁶Quoted in Matsunaga, “Human Rights,” 379.

⁶⁷Kadīvar, *Haqq an-nās*, 43. This interpretation of the sura he shares with Abdolkarim Soroush. See Sarkohi, *Demokratie- und Menschenrechtsdiskurs*, 53.

⁶⁸Quoted in Matsunaga, “Human Rights,” 363.

⁶⁹M. Kadivar, “Human Rights and Intellectual Islam,” in *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition*, eds. K. Vogt et al. (London: IB Tauris 2009), 47–68, 56.

Rejecting or restricting freedom of religion and laying down punishments for apostasy, including execution or jail with hard labour, makes traditional Islam appear irrational and weak. The way to safeguard believers' faith is to strengthen their religious knowledge, not to deprive them of freedom of religion and opinion. There can be no doubt that the human rights position in support of freedom of opinion and religion is rationally preferable.⁷⁰

It appears that readers of the journal *Āftāb* had been invited to put forward their questions to Kadīvar. Three questions asked by readers and published in *Āftāb* explicitly concerned the rights of Iranian Baha'is. Although the rest of the interview, questions as well as answers, is in Persian, the questions regarding the Baha'is are printed in English:

*8. Could you please clarify your opinion about the rights of Bahais according to your understanding of Islamic law? 9. I would be very thankful if you clarify the rights of 'Bahais' according to your modern interpretation of Islamic law? 10. According to Holy Quran, what status is assigned to Bahais? Are they infidels? What are their rights?*⁷¹

Kadīvar's answers do not refer to the Baha'is explicitly – he never uses the word – but remains rather vague⁷²: All human beings had a right to human rights, regardless of their belief. No one should be deprived of a minimum of human rights because of his or her religious beliefs. There was no happiness in life without these rights guaranteeing protection of convictions and religious beliefs. Basically, human rights were everybody's rights, not just the rights of monotheists and true believers. Kadīvar concludes his answer saying that the Qur'an identifies Muḥammad as the last divine prophet and Islam as the final

⁷⁰Ibid., 56.

⁷¹Kadīvar: *Ḥaqq an-nās*, 126.

⁷²My reading here differs from Sarkohi's interpretation of the text. See Sarkohi, *Demokratie- und Menschenrechtsdiskurs*, 98. In an interview conducted eight years later, Kadīvar confesses that he had not been explicit in his answers regarding the Baha'is. M. Kadivar, *Gottes Recht und Menschenrechte: Eine Kritik am historischen Islam*, trans. A. Eschraghi (Freiburg: Herder, 2017), 46, footnote 13.

religion. Each claim contradicting this assertion was null and void (*bāṭel*), mistaken (*nā-ḥaqq*) and had to be considered a transgression (*khurūj*) of faith.⁷³ Quite obviously, in his answers Kadīvar does not really deviate from the official discourse regarding the Baha'is. Even if he declares that “all men are equal” and human rights should apply to all human beings, he still refers to the Qur'an to tell his querists that Muslims agree on the article of their faith that Muḥammad was the last of the prophets. Although Kadīvar tries to prove that what he calls “spiritual” or “new-thinker” Islam (*islām-i ma'navī/islām-e nau-andīsh*)⁷⁴ does not contradict human rights in the least, he does not attempt to reconcile the situation of the Baha'is in Iran with his concept, however. The only concession he makes is that, “Even though the Holy Qur'an has expressly stated that after Muhammad's prophecy no religion other than Islam is acceptable, and that anyone with a different religion detracts from the public good, it has not mandated any worldly punishment for non-Muslims.”⁷⁵

In a second volume dedicated to Islam and human rights published on his website in 2014, Kadīvar concentrates on religious freedom and freedom of speech, mainly apostasy and blasphemy. As stated in the introduction, he again seeks to prove that freedom of religion, particularly abandoning Islam for another or no religion at all, is compatible with Islam. On the contrary, “any traditions that sanction killing or shedding the blood of an apostate are incompatible with the noble Qur'an.”⁷⁶ Additionally, Kadīvar says, there was no evidence

⁷³Kadīvar, *Ḥaqq an-nās*, 126. Here, again, he agrees with Abdolkarim Soroush. See Sarkohi, *Demokratie- und Menschenrechtsdiskurs*, 58–59.

⁷⁴On Kadīvar's “new thinker Islam,” see Kadīvar, “Human Rights”; Kadīvar, *Ḥaqq an-nās*; Kadīvar, *Gottes Recht*; K. Amirpur, *Unterwegs zu einem anderen Islam: Texte iranischer Denker* (Freiburg: Herder, 2009); Hunter, *Islamic Reformist Discourse*; M. Kamrava, *The New Voices of Islam: Reforming Politics and Modernity: A Reader* (London - New York: I.B. Tauris, 2006); Matsunaga: “Human Rights.”

⁷⁵Quoted from Kamrava, *New Voices of Islam*, 138–39. Apparently, Soroush does not include the Baha'is either when he demands freedom of religion, since the Bah'i Faith is not considered a religion in Iran. See Sarkohi, *Demokratie- und Menschenrechtsdiskurs*, 68.

⁷⁶M. Kadīvar, “Mujāzāt-i murtad va āzādī-i mazhab. Naqd-i mujāzāt-i irtidād va sabb an-nabī bā mavāzīn-i fiqh-i istidlālī,” www.kadivar.com, 1393/2014), 26 (9 English Introduction). *Qur'an*

in the Shiite literature proving that the imams had ordered apostates to be killed or had consented to it.⁷⁷ He also states that the prophetic tradition (*ḥadīth*) requesting the killing of apostates was related by Muḥammad's companions, not by the Shiite Imams, and was taken from Sunni jurisprudence by Shiites.⁷⁸ Furthermore, other than at the time of the prophet and after, when apostates not only exited from Islam but joined its enemies to fight against Muslims,

the present-day usage of 'apostate' is restricted to exiting from the religion of Islam without considering any other conditions and motives. In other words, the subject of 'apostasy' is associated with religious and cultural freedom by contemporary people, whereas the same term in the religious judgements of Islam is linked to political crimes that are akin to a belligerent (*muharib*) [behaviour].⁷⁹

At least, Kadīvar believes, the right way to deal with apostates is not well-defined but ambiguous. Consequently, in case of doubt the penalties for apostasy should be suspended.⁸⁰ He then concludes that there is no temporal punishment for apostasy in Islam. Therefore, the execution of one guilty of insulting the prophet or the Qur'an could not be defended legally. The right to life did not depend on a person's beliefs.⁸¹

Having become acquainted with the US-American concept of "hate speech" (*guftar 'hā-i nifrat'zā*), Kadīvar proposes that the defamer of the Prophet (*sābb an-nabī*) and those denigrating religious convictions should be accused of this crime and sentenced accordingly.⁸² Essentially, respect had to be bestowed upon the believers, not upon their beliefs (*iḥtirām bi-bāvarmand, na bi-bāvar*). Thus, freedom of

9:74 indicates that God will punish apostates.

⁷⁷Ibid., 26.

⁷⁸Ibid., 27. Abū Bakr is believed to have claimed capital punishment for apostates during the *ridda*-wars. Waardenburg, *Human Rights*, 170.

⁷⁹Kadīvar, "Mujāzāt," 26 (4, English Introduction).

⁸⁰Ibid., 27. See also p. 28 for a summary of Kadīvar's arguments.

⁸¹Ibid., 29.

⁸²Ibid., 30.

expression included criticism of religious beliefs whereas insulting religious and atheistic beliefs was forbidden. Kadivar considers the insult of religious beliefs as well as atheism to be “hate speech.”⁸³ Referring to article 20 of the ICCPR that inter alia mentions religious hatred, Kadivar argues that insulting religious beliefs had to be considered “hate speech,” a crime that would be prosecuted by a civil court.⁸⁴ For people of different beliefs to live together peacefully, mutual respect (*ihtirām-i mutaḳābil*) was vital. “Respect” could be deemed the keyword of Kadivar’s thoughts as expressed in the volume under consideration. In this world, adherents of different religions and even atheists should neither try to force each other to believe in one faith or the other, but should respect each other’s convictions to live peacefully together.⁸⁵ In the afterlife, however, an apostate would have to face “severe retribution if his/her denial was due to spite and hostility.”⁸⁶

At the end of the introduction, Kadivar draws attention to “The book’s Limitations and Future Areas of Research,” particularly the way different schools of thought (Sunnis, other Shiite schools), other Abrahamic (Judaism, Christianity, and Zoroastrianism), non-Abrahamic (Buddhism and Hinduism) and more recent faiths (*ā’in’hā-i dīnī*, Babism and the Baha’i Faith) perceive of freedom of religion.⁸⁷ This announcement alone and the fact that Kadivar refrains from calling the Baha’i Faith a “wayward sect,” etc., instead counting it among the “more recent faiths” is certainly remarkable. Even more remarkable is the fact that Kadivar has published a revised perception of the Baha’i Faith on his website. Also, he insisted that his new thinking regarding this religious community in Iran be added to a translation of a selection of his texts on human rights into German shortly before the book

⁸³Ibid., 29–30. The author alleges that insulting atheistic beliefs (*bār’hā-i ilhādī*) was prohibited by the Qur’an but does not offer any references.

⁸⁴Here, again, Kadivar is in accordance with Muntazirī. See Kadivar, “Mujāzāt,” 25. See also UDHR, arts. 10, 11.

⁸⁵Ibid., 29.

⁸⁶Ibid., 25.

⁸⁷Ibid., 36.

was published.⁸⁸ Kadīvar after all not only offers an alternative to the official discourse of the IRI. He also leaves mainstream Islamic theology⁸⁹ and chooses a secular approach to advocate freedom of religion for Iran as it is proclaimed in the UDHR. Secularism, Kadīvar states, provides an atmosphere for religious as well as non-religious people to present their convictions. People should be free to select their religious beliefs according to their individual insights. These beliefs and insights should not lead to the denial of certain rights. This basic principle, as Kadīvar affirms, deviates from a traditional Islamic interpretation. About the Baha'is, Kadīvar says that one should refrain from using the stereotype accusation (*ittihām-i kilishah'ī*) “spying for Israel” (*jāsūsī barā-i Isrā'īl*) against Baha'i leaders, since this state was illegally established decades after the founder of the Baha'i Faith had been exiled there. Even if one considered the Baha'i Faith (*bahā'iyat*) a misguided sect (*firqa-i bā'īl*) and a deviated religion (*ā'in-e munharif*), should one deprive its followers of human rights, Kadīvar asks. Did they, as Baha'is, forfeit their right to justice, life, property, honor (*nāmūs*), and peace of their deceased? There was no law in the IRI denying the Baha'is their human and civil rights. “Baha'is are no unbelievers (*bahā'iyān kāfir nīstand*).” As monotheists and since they acknowledged the prophet of Islam – even if they contested him to be the seal of the prophets – they were not ritually impure.

⁸⁸In September 2016 Kadīvar clarified that he was now free to express his views on the Baha'i Faith as well as on the subject of homosexuality and asked to include two addenda to the book. Kadivar, *Gottes Recht*, 185. In the following, I will refer to the Persian text sent to the translator by Kadīvar, made available to me. It is a conclusion of a number of short articles and papers, questions and answers given in Persian since 1392sh (2013/14). For the relevant texts, see <http://kadivar.com/?p=15243>.

⁸⁹Kadīvar has rightfully long been regarded as representing mainstream Islamic theology. See K. Amirpur, “‘La ikraha fi’l-din – There Is No Compulsion in Religion ‘– Or Is There?,” in *Freedom of Religion in the 21st Century: A Human Rights Perspective on the Relation between Politics and Religion*, ed. H.-G. Ziebertz (Leiden: Brill, 2015), 74–91, 88; S. Amir Arjomand, “La théologie politique shi'ite: Transformation idéologique, traduction constitutionnelle,” *Les temps modernes* 683 (2015): 144–59, 156. Arminjon Hachem differs from the mentioned authors insofar as she calls Kadivar's reformist thinking “une démarche herméneutique.” Arminjon Hachem, *Les droits de l'homme*, 233.

Being a denier of Islam or the mahdi, denying that Muḥammad was the last prophet, or denying God's existence, that is to be an atheist or an unbeliever, does not justify to deny someone their basic human and civil rights. These rights are in no way depending on religion or beliefs. Hence, there is no religious justification to deny Baha'is basic human and civil rights.⁹⁰

Conclusion

Following Hannah Arendt, “the right to have rights” implies a trilateral relation between an individual claiming his or her rights, other members of the group/society obliged to grant these rights, and the state and its authorities to enforce them. She clearly protests “against anyone's being placed or left in a condition of having not rights.”⁹¹ These days, Arendt's “right to have rights” can be regarded as a claim on behalf of the Baha'is of Iran, because their situation has not satisfied the conditions of having rights according to the UDHR. If we assume that rights may not only be claimed by individuals but also by groups of people, then, consistent with Arendt, the society in which the members of this group live would have to grant them these rights. The state for his part would have to enforce the rights demanded by a ‘minority’ that might also need its protection. Arendt had herself witnessed what happened if a state did not act as a protector of rights but became the foremost threat for parts of its population. This often happens when a “majority” decides that a particular group does not belong to the alleged ‘homogeneous’ nation, thus creating a “minority.”⁹² Political exclusion and civil death⁹³ can lead to killing of individuals, ethnic cleansing, and genocide. Although the High Commissioner of the United Nations had a paper published that identifies objective –

⁹⁰M. Kadivar, *Difā' az huquq-i insānī-i bahā'iyān*. Unpublished Persian text. See also <http://kadivar.com/?p=15243>. For the German translation see Kadivar, *Gottes Recht*, 188–91.

⁹¹Michelman, “Parsing,” 200.

⁹²S. Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004), 55.

⁹³Cole calls the exclusion of Baha'is in Iran “civil death.” J. R. I. Cole, “The Baha'i Minority and Nationalism in Contemporary Iran,” in *Nationalism and Minority Identities in Islamic Societies*, ed. M. Shatzmiller (Montreal: Queen's University Press, 2005), 127–163, 156.

like a shared religion – as well as subjective – individuals identify themselves as members of a religious minority – factors, states like Iran do not accept any of these criteria. Instead, the IRI either denies the existence of the Baha’is as a religious minority or refuses to allude them their rights as stated in the UDHR and the ICCPR. Only those faiths can legally be accepted as constituting religious minorities in Iran that are either mentioned in the Qur’an or were declared *ahl al-kitāb* or *ahl ad-dimma* in the early years of Islam. Additionally, although Baha’is believe in Muḥammad’s prophecy, they do not venerate him as the last of God’s messengers. Consistently, they are not considered a religious minority by the Iranian state and society and can therefore legitimately be denied “the right to have rights.” Yet, even if the Baha’is in Iran are not accepted as a religious minority, individual members of the creed do have rights as citizens of the state.⁹⁴

Freedom of religion and the right to life count among the human rights as formulated in the UDHR and the ICCPR respectively.⁹⁵ The right to “freedom of thought, conscience and religion,” includes the “freedom to change his [her] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his [her] religion or belief in teaching, practice, worship and observance.”⁹⁶ Hence, individuals have the right to choose a religion or belief and they also have the right to do this “in community with others.” As we have seen, the right to change religion or belief does not extend to Muslims, at least as far as the official discourse in Iran is concerned. Misbāḥ Yazdī, a leading representative of this discourse, clearly states that the right to freedom of religion and expression equals apostasy, the punishment of which must be protected. He is in line with Ayatollah Khamenei who declared that “For us the Universal Declaration of Human Rights is nothing but a collection of mumbo-jumbo by disci-

⁹⁴See Pistor-Hatam: “Non-understanding,” 92–93 and the quoted literature.

⁹⁵See Moschtaghi, *Die menschenrechtliche Situation*, 61 for the rights of minorities according to international law.

⁹⁶UDHR, art. 18.

ples of Satan.”⁹⁷ Both clerics representing the official discourse in the IRI, raise the claim that Twelver Shiite Islam and its law as codified in Iran be sacrosanct. Asserting the integrity of this religious culture, they imply it to be an “autonomous and independent complete entity, a meaningful, almost organic whole, which fulfils clearly defined standards of truthfulness and respectability.”⁹⁸ Hence, an external moral authority like human rights norms is seen as an assault on this integrity.⁹⁹

Can reformist thinkers like Kadivar, then, pave the way for the right to freedom of religion in Iran? Using methods of classical Shi’ism, he concludes that neither the Qur’an nor the traditions of Muḥammad and the Imams provide any evidence supporting the consensus that apostates had to be killed. It was God’s decision only to judge those who had left Islam. Moreover, it was God’s will too that there existed a plurality of beliefs in this world. Hence, no one should be forced to become a Muslim and instead of punishing apostates, the knowledge of believers should be reinforced. Mutual respect was required so that people of different beliefs could live together peacefully. Insulting religious – and atheistic – beliefs should be considered an offence prosecuted by civil courts. According to Kadivar, defaming the Prophet and denigrating religious convictions were among the insults directed against Islam. Since the Qur’an identified Muḥammad as the last divine prophet and Islam as the final religion, each claim contradicting this assertion was null and void and had to be considered a transgression of faith.

This, I would suggest, should be interpreted as the “insult” or “hate

⁹⁷Quoted in Mayer, *Islam and Human Rights*, 34.

⁹⁸See R. Forst, “Das grundlegende Recht auf Rechtfertigung. Zu einer konstruktivistischen Konzeption von Menschenrechten,” in *Recht auf Menschenrechte: Menschenrechte, Demokratie und internationale Politik*, eds. H. Brunkhorst et al. (Frankfurt a. M.: Suhrkamp, 1999), 66–105, 71.

⁹⁹*Ibid.*, 71. Part of this entity is the belief in “equality in difference,” meaning that different human beings have different rights (regarding sex, religious beliefs, etc.). See A. Duncker, “Ungleiches Recht für alle? Zur Rechtsgleichheit in islamischen Menschenrechtserklärungen,” *Orient* 4 (2004): 565–81 569.

speech” to be prosecuted in this life, according to Kadīvar. If “hate speech” was to be punished and people of different religions and beliefs were to respect each other’s convictions, would this not also apply to the Baha’i community in Iran? Should not the delegitimization of the Baha’i Faith, the complete lack of respect vis-à-vis its rules and regulations, the “hate speech,” and the arbitrary killing of individual Baha’is equally be prosecuted? Mutual respect called for by Kadīvar would have to include the respect granted to each religious minority in Iran according to the definition of the High Commissioner of the UN: a shared religion, in this case the Baha’i Faith, as the objective factor identified by the UN, and individuals who identify themselves as members of its religious community. In this case, the prohibition of denigration (*hijā’*) would not only apply to Islam but would include all beliefs, even atheism.

Muḥsin Kadīvar has come a long way from a traditional Muslim/Shiite theological perception of the Baha’i Faith to a secular attitude granting all human beings the same basic rights, irrespective of their beliefs. Like his teacher Muntazirī, he has conceded Iranian Baha’is the same civil rights as any other Iranians and spoken out against punishment for apostasy in this world. Almost ten years after his first publication on human rights, he began to argue for a secular society which granted religious as well as non-religious people the freedom of religion. In admitting that the Baha’i Faith is indeed a monotheistic – if “deviated” – religion and its adherents cannot be considered unbelievers, Kadīvar himself shows the respect he considers necessary for people of different beliefs to live peacefully together. Thus, he revokes the delegitimization of a religious minority in Iran that still is determinant in the official discourse of the Islamic Republic. It remains to be seen if his contribution to a counter-discourse will have any effect, not least on the official discourse and the situation of the Baha’is of Iran. For, if we follow Arendt, Iranian society would have to grant this group its rights and the Islamic Republic would have to enforce these rights and protect its minorities, religious or otherwise.