I. Introduction

Two groups of Muslims, the Sunni and Shi’a, are subject to substantial human rights violations whether in Iran or Bahrain although they are supposed to enjoy the same rights as the rest of the population. Despite being Muslims and citizens of their countries, they are not ensured their citizenship rights and are subject to attack. Governments in both cases play a major role in these attacks.

The religion affiliation of these two groups is the main reason for the attack and deprivation of their rights compared to the rest. Religion is one of the elements that people give high attention to it especially in Middle Eastern Countries. People consider it one of the basics that is highly respected and should be normally practiced.

Recognition of a creed and protection of its believers are essential elements in the dynamic relation between governments and people. "A religion is not simply a personal belief, but invokes teachings, practices, worship, observance and private as well as public manifestations of these beliefs and values."¹ This in return requires that people feel free and safe to practice their own religion in a legitimate frame.

Religious minorities have been subjects of historical attempts to protect them. This can be seen in treaties within Europe such as the 1607 Treaty of Vienna the 1648 Peace of Westphalia, the 1697 Treaty of Rijswijk and the 1763 Treaty of Paris.² However, the treaty system has not been successful in limiting religious violations. This was clear during World War II when extermination of Jews and other groups occurred. It is also why freedom of religion was one of the four essential freedoms that established a world order after the war.³ "Religious intolerance and repression have been the great predisposing factors of history."⁴

If this is the case for minority who experienced and still experiences kind of intolerance and attack within their communities, majority, on the other side, should enjoy full protection and obtain their rights on the basis of being the majority of any state.

Regardless of being either the minority or the majority, it has no relevance to attack and intolerance. In the present case of the Shi’a, who are the majority in Bahrain and the Sunni who are a minority in Iran, neither group enjoys human rights protections.

² Id. at 142.
³ Id. at 143.
⁴ Id. at 141.
The targeting of a specific group and attacking it indicates that we do not accept this group especially if there are no definite and acceptable reasons behind this refusal. When we cannot imagine and accept who is different, there are always consequences for that which in most cases are negative.

The idea of imagining and accepting the other can be seen in a problematic form in the Shi'a and Sunni case with its special religious feature. Sunni and Shi'a are the major sects of Islam. They vary from being either a majority or a minority from one state to another. For example, in Iran the majority of the population and the ruling party are Shi'a and the minority is Sunni, and in Bahrain the ruling government and the minority are Sunni and the majority of the population is Shi'a.

Iran and Bahrain represent two critical examples in addressing the issue of majority and minority rights and the idea of imagining and accepting the other in terms of human rights violations. The inability of imaging the other leads to human rights violations in both states. They are committed in one case by a majority towards a minority in the case of Iran and another case by a minority towards the majority in the case of Bahrain.

Both Iran and Bahrain have legal obligations towards freedom of religion and equal rights in citizenship. Yet, implementation and commitment to these obligations is questionable. This situation clearly reflects the idea of one group negatively accepting the other.

The question beyond this case is to what extent the difficulty of accepting the other leads to attack? And on what basis is this refusal or lack of acceptance of the other built on? Thus, this paper argues that difficulty of accepting who is different is the foundation for attacking this other and it does not matter whether it is a majority or a minority.

Part I of this paper presents the theory of imagining and accepting the other as a framework to human rights violations committed towards Shi'a and Sunni Muslims. Part II demonstrates the legal obligations of both states, Iran and Bahrain, represented in international treaties, customary law and state constitutions as a way of regulating the issue of accepting the other. Part III explains the Islamic obligations since both states are Islamic states and derive their legislation from Islamic principles. Also, it displays the split between Shi'a and Sunni Muslims with its historical and political roots which highlights the political starting point and ending with theological difference which results in this kind of indirect rejection to each other Part IV presents human rights violations committed by both governments arguing that the difficulty of accepting the other leads to severe human rights violations regardless of other obligation whether religious, domestic or international ones.
II. Imagining and Accepting the Other

The other in Iran and in Bahrain represents a distinguished status since in Bahrain the other is the Shi’a majority who are dominated by the Sunni minority, and in Iran it is the Sunni minority dominated by a Shi’a majority. Moreover, the Sunni minority in Iran are an ethnic minority at the same time.

The other concept and its acceptance is needed in human relations since “the way we act toward others is shaped by the way we imagine them.”5 This is a reality whether we are talking about a friend or a stranger, but it will be more severe in the case of a stranger.6 Sometimes people in daily life cannot evaluate situations correctly and misunderstandings often result. In such situations, having good relations usually solves this problem. However, if the same situation happens with people we do not know, we often assume bad intentions and aggression and hostility may result.

This difficulty in imagining the other is seen in situations where one can be present where there is somebody in pain and not know that this person faces such a problem.7 The Shi’a in Bahrain suffer a lot everyday and in many instances there are Sunni who observe this and do not react. The same is true in Iran where the Sunni are deprived of their rights in the presence of Shi’a who do not act as well. To remain ignorant of other’s pain is a way “to inflict it and amplify it the body of the other person while remaining immune oneself.”8

There is a mutual relation between the problematic issue of otherness and the infliction of pain.9 This is because the difficulty in imagining the other can cause the action of injuring.10 Basically, with trouble accepting the reality of the other, the act of injuring is the actual outcome.11 Injury can be used to specify bodily injury and spiritual injury.12 “Just as invading another’s body, invading another’s property or another’s rights.13 This is considered a concrete acknowledgement that we cannot see this reality of the other.14 This injuring can appear through infringement of human rights.

Furthermore, the relation between injuring the other and the ability to imagine this other is very much connected, but the intensity of the reaction is not. “The human capacity to injure
other people has always been much greater than its ability to imagine other people. The human capacity to injure other people is very great precisely because our capacity to imagine other people is very small.”15

One way to solve the problematic issue of imagining the other in a legal way is through a constitution that formulates this relation and regulates it at the same time.16 The ultimate position and the unique role of the constitution play a significant function in this issue of imagining the other.17 This function has a variety of applications to the idea of accepting the other.18 Moreover, this effect of the constitution can exceed borders of the country and be built in people’s behavior outside the legal framework of their countries.19

The solid effect of a constitution can be translated into the huge number of people who are legally bound by it.20 This is reflected in their daily behavior and also states’ strategic plans.21 Therefore, in human rights discourse, principles and laws that govern human rights are “universal in content, but they are particular in their base of authorization and enforcement” which can be achieved by the constitution.22

One way to achieve equality through the idea of the otherness and the generous imagining is weightless which means seeking equality between self and other can be achieved by “making one ignorant about oneself, and therefore as weightless as all others.”23 This equality cannot be achieved by giving others an imaginative weight equal to one’s own, but by “erasing for a moment one’s own dense array of attributes.”24 This is called, according to Rawls, “the symmetry of every one’s relations to each other.”25 Constitutions do a great job in doing that since “they define rights and powers that are independent of any one person’s personal features.”26

The difficulty of imagining the other has a concrete relation to the type of that imagination. A problematic aspect of imagining the other lays basically at the kind imaginings and opens the door to giving one group the power to regulate the welfare of the other group.27

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15 Id at 103.
16 Id. at 88.
17 Id.
18 Id 89.
19 Id. at 100.
20 Id.
21 Id.
22 Id.
23 Id.
24 Id. at 106.
25 Id.
26 Id.
27 Id. at 110.
this, law plays a significant role in eliminating the structural position of the other. \(^{28}\) "More self-revision is needed as we continue to repair our laws and prepare for a more generous future." \(^{29}\) That self-revision best proceeds through our constitutional structures and aspirations. Constitutions are needed to uphold cosmopolitan values. \(^{30}\)

Furthermore, guaranteeing freedom of religion to citizens is a matter of justice which is a human right. This justice has no place other than the state constitution since it is the legitimate channel to implement that justice. The needed justice in our societies is very much related to constitutionalism and specifically to constitutional democracy. \(^{31}\) John Rawls stated in his analysis of this issue that "our hope for the future of our society rests on the belief that the social world allows a reasonably just constitutional democracy existing as a member of a reasonably just society of people." \(^{32}\)

Some historical conditions are related to a reasonably just constitutional democracy. \(^{33}\) These conditions include the fact of reasonable pluralism. \(^{34}\) The variety of peoples who differ among each other in culture and traditions whether religious or nonreligious is equivalent to reasonable pluralism. \(^{35}\) The rule of law is not far from the diversity matter since "the law of peoples must be acceptable to reasonable peoples" who represent diversity among each other. \(^{36}\) The law must not give attention to this diversity because fairness to everyone and cooperation among all of them must be implemented by the law. \(^{37}\)

In order for justice to be a realistic issue in a liberal concept, the actual law of nature is essential. \(^{38}\) Thus, the society must depend on that and get a sort of stability for persons’ rights legally. \(^{39}\) In this liberal notion, people are taken as they are and constitutional and civil laws as they would be in a just society. \(^{40}\) Another condition that is important for achieving realistic justice in a political conception is that "its first principles and precepts be workable and applicable to ongoing political and social arrangements." \(^{41}\)

Because of

\(^{28}\) Id.
\(^{29}\) Id.
\(^{30}\) Id.
\(^{32}\) Id.
\(^{33}\) Id.
\(^{34}\) Id.
\(^{35}\) Id.
\(^{36}\) Id. at 12.
\(^{37}\) Id.
\(^{38}\) Id.
\(^{39}\) Id.
\(^{40}\) Id. at 13.
\(^{41}\) Id.
constitutional democracy.\textsuperscript{42} These institutions are supposed to convey the idea of justice to its citizens who are active participants in the society with a conceptual frame of these political and ideals concepts.\textsuperscript{43} This political and moral frame will direct people to actions that are derived from that ideal frame.\textsuperscript{44} Basically, justice will be implemented through those citizens in the long run. Because moral behaviors are required from citizens, there are political morals that are necessary for that such as a sense of fairness, tolerance and a willingness to meet others half-way.\textsuperscript{45}

The other will not be imagined and accepted independently even within a religious frame. In such cases, legal obligations and specifically constitutions are effective tools. Yet, the problem still is that these constitutions are drafted by governments and respectively people. This is a real problem as we deal with a human being who can or cannot imagine the other in this process of drafting. Furthermore, implementations of constitutional provisions are not less important than drafting these provisions since through implementation the real imagining appears.

\textsuperscript{42} Id. at 15.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{45} Id.
III. Legal Background

The legitimacy of a state is represented in its legal framework. This legal framework is divided into two fundamental mechanisms. These mechanisms are international obligations represented in international treaties and declarations which in turn represent international customary law and the constitution which demonstrates the sovereignty of the state and has its superior obligation.

A. International Instruments

International law regulates states’ behavior towards its people whether they are the majority or the minority which at the same time represents the notion of accepting the other by following these obligations.

Religion is one of the topics that is included in declarations and conventions. Because of its importance and its consequences, protection of religious minorities has become one of the valuable aims of the international community. Secretary – General of The United Nations Mr. Ban Ki-moon in a session for the United Nations of a High-Level Dialogue on Interfaith and Intercultural Understanding referred to the otherness at the beginning of the session. He emphasized its importance by recounting his impression while travelling as part of his official duties:

> They all fear that which is different from them: the other ethnicity, the other skin color, the other cultural or linguistic tradition and, above all, the other religion.”

“It is time to promote the idea that diversity is a virtue, not a threat,” he said, adding that it was also time to stress that our common humanity was greater --- far greater --- than our outward differences. “In short, it is time --- indeed, it is past time --- for a constructive and committed dialogue; a dialogue amongst individuals, amongst communities and between nations.”

So, as an important matter, the otherness issue needs to be addressed by the international community practically.

1. Universal Declaration of Human Rights (UDHR)48

Freedom of religion is addressed in the UDHR, the first and most important international instrument that was passed in 1948. Although it is not a binding document, it has profoundly affected the international community and shaped awareness among states and people. Article 18 of the Universal Declaration states that:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in

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47 Id.

community with others and in public or private, to manifest his religion or belief in 
teaching, practice, worship and observance.49

This article guarantees freedom of religion in terms of adopting, practicing, and even 
changing it. Also, it guarantees this right as a collective right not only for the individual. Thus, 
a group of people can have the right to have their own creed. Furthermore, they can freely 
practice their prayers and equally they have the right to teach commands of this religion. All 
these rights are derived from being human.

2. International Covenant on Civil and Political Rights (ICCPR) 196650

Unlike the UDHR which is not binding, the ICCPR is a binding document that obliges states to 
conform to its conditions. The ICCPR handles religious matters in article 18 which declares 
that:

1. Everyone shall have the right to freedom of thought, conscience and religion. This 
right shall include freedom to have or to adopt a religion or belief of his choice, and 
freedom, either individually or in community with others and in public or private, to 
manifest his religion or belief in worship, observance, practice and teaching.51

2. No one shall be subject to coercion which would impair his freedom to have or to 
adopt a religion or belief of his choice.52

3. Freedom to manifest one’s religion or beliefs may be subject only to such 
limitations as are prescribed by law and are necessary to protect public safety, order, 
health, or morals or the fundamental rights and freedoms of others.53

4. The States Parties to the present Covenant undertake to have respect for the 
liberty of parents and, when applicable, legal guardians to ensure the religious and 
moral education of their children in conformity with their own convictions.54

Clearly, article 18.1 reinforces what is stated in the UDHR. While article 18.1 guarantees 
freedom of religion with all its applications, article 18.2 asserts that right through prohibition of 
any coercion that contradicts with rights that are guaranteed in Article 1. Article 18.3 
determines any limitations to be controlled by law and in order to follow law and its 
necessities. Finally, article 18.4 places obligations on state parties to apply this freedom of 
religion in terms of children’s religious education through their parents or guardians.

The ICCPR guarantees freedom of religion even during times of emergency when states can 
derogue from its obligations. This is found in article 4 of the ICCPR. It states that:

1. In time of public emergency which threatens the life of the nation and the existence 
of which is officially proclaimed, the States Parties to the present Covenant may take

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49 Id., art. 18.
51 Id., art. 18.
52 Id.
53 Id.
54 Id.
measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.\textsuperscript{55}

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.\textsuperscript{56}

This article restricts derogation from this convention in times of public emergency with the exception of article 18 that assures religious freedom which means that any state does not have the right of derogation under any circumstances.

In addition to non derogation from minority rights, articulating these rights is clear in Article 27 of the ICCPR which provides minority the right to enjoy complete freedom in terms of practicing, using their own language and culture. This article states that:

\begin{quote}
In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.\textsuperscript{57}
\end{quote}

The ICCPR handles all the situations that minorities may face within their communities in order to avoid any kind of discrimination. What is most important is the ICCPR’s binding feature which obliges states to conform to its articles as long as they sign this Covenant.

3. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)\textsuperscript{58}

Another international non binding instrument related to religion is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities. This Declaration pays attention to the rights of minorities including religious minorities in terms of the rights that they should enjoy regardless of their identity as a minority. As a starting point, this declaration reaffirms that there is no distinction between human beings based on religion in terms of their human rights and refers in particular to United Nations’ aims and to the Charter: \textsuperscript{59}

\begin{quote}
The General Assembly, Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion.\textsuperscript{60}
\end{quote}

\textsuperscript{55} Id. art. 4.
\textsuperscript{56} Id. art. 4.
\textsuperscript{57} Id. art.27.
\textsuperscript{58} Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.
\textsuperscript{59} Id.
\textsuperscript{60} Id.
Also, this Declaration gives considerable attention to the importance of protecting minorities including religious minorities since it is connected to state stability. Moreover, this protection and promotion of minorities’ rights strengthens relations between states and among people themselves. The present Declaration puts responsibility on the United Nations to play this significant role in the protection of minorities and the effective implementation of international instruments regarding their rights.

Article (1) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities places the responsibility on states to ensure minority identity. It requires states to provide all that is needed to protect the identity of the minority either by legislation or protection:

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.

Clearly, states through this declaration have immense responsibility to guarantee minorities’ identity through protection and rule of law. In terms of minorities’ practices and daily matters, article (2) ensures these rights. Article 2 (2) even ensures minorities’ right to participate in public life:

Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

When it comes to institutions and associations, article 2.4 guarantees this right to minorities stating that:

“Persons belonging to minorities have the right to establish and maintain their own associations.”

Encouraging minorities’ culture, language and history are specific rights that article 4.4 has insisted on through taking appropriate steps to facilitate these rights.
participation in the national economy and development is another right that should be protected according to article 4.5. If any state decides to change its internal policy, this should be with regard to minorities’ legitimate interests according to article 5.1.

4. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

More specific to religious matters and older than the previous Declaration of the Rights of Minorities, this Declaration deals with the elimination of discrimination based on religion or belief.

Article 1 of this Declaration reaffirms freedom of belief and the right to have a religion whether individually or collectivity or publicly or privately. What is most important is the prohibition of coercion that impairs this freedom of religion. All of these principles are articulated in article 1 which states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

The preventing and elimination of any discrimination based on religion in terms of human and fundamental rights and legalization of these rights are clearly stated in article 4:

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.
2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Religious education of children is guaranteed through this Declaration whether through parents or legal guardians. Moreover, these rights should be protected from any kind of discrimination. This is clearly articulated in article 5:

Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

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69 Id. art. 4.
70 Id. art. 4.
71 Id. art. 5.
72 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981.
73 Id. art. 1.
74 Id.art.4.
The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men. "75

All detailed rights that relate to one's creed such as worship, receiving voluntary financial help, celebration and ceremonies are stated in article 6:

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:
(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
(b) To establish and maintain appropriate charitable or humanitarian institutions;
(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.76

International law reflected in all of these international treaties, and customary law represented in declarations are concrete, active and actual examples of the high concern to the concept of religion and specifically freedom of religion with all its consequences in terms of its worship, education and protection by state authority. Therefore, a signatory state is obliged to follow these obligations. It is not an option for it to follow or not since they have already signed these treaties.

B. Constitutional Law

The second mechanism that comes along with international law and at the same time should ensure protection of rights on a domestic level is the Constitution of any state.

Constitutional law is where states can actually implement their theoretical imagining and acceptance of the other as a mean to achieve justice through rule of law.

Constitutions as a significant legal document and as a symbol of a state's sovereignty play an important role in the relationship between state authority and individuals in terms of human rights matters. Citizens obtain their rights in constitutions. Freedom of religion as one of human rights should be entrenched in a state's constitution. Furthermore, signing an international treaty requires that the signatory state's constitution comply with its treaty obligations.

A Constitution is the legal document of the state which has a wide range of authority.77 "To constitute means to make up, order, or form; thus a nation’s constitution should pattern a

75 Id art. 5.
76 Id art. 6.
political system.” 78 Not all constitutions do so in an explicit way; while some constitutions declare their supreme law explicitly, others do that implicitly. 78 Where there are societies of diverse groups whether religion or other elements, “a constitution may thus function as a unifying force, the only principle of order.” 80

The universality of human rights has impacted on the nationality element. 81 A moral state protects and systematizes “the presumably natural rights of its human members.” 82 “Human rights movement has expanded rights as worldwide in character, taking precedence over the national sovereignty principles.” 83 This universality included all types of people such as ethnic rights and religious rights. 84 This inclusion has been reflected in social structure, families, and religious organizations. 85 The collective global level has a great effect that is globally as well. 86

Human rights discourse on the domestic level has different views. 87 Two significant views clearly articulate the case of human rights in Middle East and its problematic implementation through the legality of the constitutions. 88

The fact is that democracy and modernization are major elements in the inclusion of human rights in constitutions as “constitutional human rights language is the product of democracy and modernization.” 89 If there is a political regime that is willing to apply human rights provisions, it is the democratic regime. 90 This can be implemented through its legal institutions. 91 Also, modernization is not contrary to that approach as “human rights language will be consistent with economic development and integration into the international system.” 92

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78 Id at 220.
79 Id.
80 Id.
82 Id at 6.
83 Id.
84 Id.
85 Id.
86 Id.
87 Id. at 7.
88 Id.
89 Id.
90 Id. at 8.
91 Id.
92 Id.
government. The second view that matches most of the Middle Eastern states that are signatories to most of international human rights bills is the linkage to world society.

In terms of drafting of the constitution, the process of rights’ determination can be problematic in certain cases. Two of these elements are the personal interest of constitution makers and group interest. Although the personal interest of constitution makers can be considered marginal in drafting constitutions, there are examples in constitutional law history that highlight its significance. The Czech Constitution is one example since “the decision to create a bicameral parliament in the new constitution was widely seen as an incentive offered to the Czech Deputies in the Federal Assembly to pass a constitutional law abolishing the federation in exchange for a place in the new Czech Senate.” The second factor is group interest. For instance, “At the U.S Federal Convention, the interest of the states was a crucial determinant of the outcome reflected both in substantive and procedural provisions of the Constitution.”

The entrenchment of freedom of religion in constitutions is related to the entrenchment of human rights principles in constitutions. Some of the world’s constitutions entrenched human rights language starting in the second mid of twentieth century. Before that the stress was on the sovereignty and self determination of newly independent states. Although the world’s constitutions embrace human rights language, they differ from one state to another. Citizens’ rights in constitutions emphasize rights that are derived from being a member in the state: “the natural law thus legitimates the state and supports the individual citizen more indirectly.” This is effective in democratic transitions as well since a new government will be keen to incorporate human rights into the domestic legal system compared to the previous. The world society is states’ commitment to international conventions. These conventions require that signatory states commit themselves to provisions of these conventions. This is done through “formal legal pressure and informal normative pressure to adopt the practices of the modern world.”

93 Id.
94 Id.
96 Id. at 300.
97 Id.
98 Id.
99 Id.
100 Id.
101 Supra note 83 at 5.
102 Id.
103 Id.
104 Id.
105 Id.
106 Id.
order to abide by convention’s obligations. On the other side, the international community has its own impact on human rights protection which is seen through conditional aid that is provided to some states; this conditionality is related to the implementation of human rights provisions. Thus, constitutions are one mean of human rights adoption which consists of national system and international system.

The actual state of a constitution is seen in the application of its provisions which depends on many factors. These factors are "level of state control, system of government, independence of the judiciary, individual access to the courts, and enforcement of judicial remedies." Thus, a constitutional instrument may not represent the real picture in terms of actual implementation of the text especially in the area of human rights. Yet, constitutions are still significant for establishing the basis for legal and political reconstruction. Although it is a quasi implementation, it is still essential law and a fundamental document for national principles. Also, in the future it can be fully implemented as it has been built for.

The legitimacy feature of a constitution is the most appropriate channel for citizens’ rights generally and freedom of religion specifically as constitution controls the implementation of any right. Legitimizing freedom of religion into a constitution is a guarantee for protecting this unique right provided it is fairly implemented.

Domestic Legal Systems of Bahrain & Iran

Constitutions of both Bahrain and Iran address the right of freedom of religion and specifically acknowledge Sunni and Shi’a Islamic sects. Nevertheless, the application of this acknowledgment is problematic.

States that enter in such conventions often amend their constitutions in
1. Bahrain Constitution

As in many other Arab states, article two of the Bahraini Constitution reflects the country’s Islamic identity and identifies Shari’a law as the primary source for legislation: “The religion of the State is Islam. The Islamic Shari’a is a principal source for legislation. The official language is Arabic.”

Chapter two article 4 of the Bahrain Constitution under the heading “Basic Constituents of Society,” solidifies the mission of the State in terms of justice and equality for citizens. The article articulates this mission “Justice is the basis of government. Cooperation and mutual respect provide a firm bond between citizens. Freedom, equality, security, trust, knowledge, social solidarity and equality of opportunity for citizens are pillars of society guaranteed by the State.” Through this article, the entire country including governmental organs and the population are directed by justice legally and practically.

As a social and economic right, every Bahraini person has the right to work and under fair work conditions. This is guaranteed by law specifically article 13 (a) and (b) which outlines these rights:

“Work is the duty of every citizen, is required by personal dignity and is dictated by the public good. Every citizen has the right to work and to choose the type of work within the bounds of public order and decency. The State guarantees the provision of job opportunities for its citizens and the fairness of work conditions.” It is the job of the state to ensure work opportunities and at the same time guarantee that fair conditions exist. Excluding specific individuals from this right is by all means illegitimate and does not comply with Bahraini constitutional provisions.

Chapter three of the Constitution which delineates the rights and duties of Bahraini citizens emphasizes the state of equality and nondiscrimination of Bahraini citizens particularly through article 18 which states that “people are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed.” Legally, this article diminishes any basis for discrimination among Bahraini people, and at the same time it promises equality among them.

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117 Bahrain Constitution, art. 2.
118 Id. art.4.
119 Id. art.13.
120 Id. art.18.
Religion is essential in the daily social context through worship and practices. This is guaranteed by the Bahraini state constitution as well. Article 22 of the Constitution is responsible for this specific right. "Freedom of conscience is absolute. The State guarantees the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings in accordance with the customs observed in the country." Accordingly, people have no restriction in terms of their religious identity and worship which is considered a genuine application of freedom.

Complementary to Article 22 which refers to religious identity, Article 23 of the Bahraini constitution demonstrates the right to expression under the provision of respect for Islam and religion as a whole. The Article states

> Freedom of opinion and scientific research is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or otherwise under the rules and conditions laid down by law, provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused.\(^\text{122}\)

This article stresses the importance of non sectarianism in the variety of means of expression for the sake of the unity of the community. In terms of forms of liberty, freedom of expression is guaranteed under the constitution through article 24: "With due regard for the provisions of the preceding Article, the freedom of the press, printing and publishing is guaranteed under the rules and conditions laid down by law." Thus, people have the right to express their opinion through publishing and press, but within the limitations of the law.

Another form of liberty is personal freedom which relates to detention and arrest. This right is articulated in Article 19 of the Constitution:

> Personal freedom is guaranteed under the law. A person cannot be arrested, detained, imprisoned or searched, or his place of residence specified or his freedom of residence or movement restricted, except under the provisions of the law and under judicial supervision. A person cannot be detained or imprisoned in locations other than those designated in the prison regulations covered by health and social care and subject to control by the judicial authority. No person shall be subjected to physical or mental torture, or inducement, or undignified treatment, and the penalty for so doing shall be specified by law. Any statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void.\(^\text{124}\)

The Bahraini Constitution addresses the concept of religion with all its applications and at the same time does not discriminate against citizens’ rights among Bahraini citizens on any basis. Therefore, the state authority has no rationale for any discriminatory strategy based on

\(^{121}\) Id. art.22.
\(^{122}\) Id. art.23.
\(^{123}\) Id. art.24.
\(^{124}\) Id. art.19.
religion. Any kind of discrimination is a clear violation according to the constitution of the state.

2. Iran Constitution

Iran is not different from Bahrain in terms of addressing religion and equality among Iranian citizens. It pays great attention to religion and includes in constitution principles of equality. A distinctive feature of the Iranian Constitution is its being based on the Islamic Revolution of Iran and derived from Islamic principles. This is outlined in the preamble of the Iranian constitution which states that “The Unique Characteristic of this Revolution is that it is religious and Islamic.”125 Thus, outstanding attention in the whole country is devoted to religion, specifically Islam, and officially in the constitution.

Article 3 (14) and (15) refer to the equality before law among all Iranian people: “securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of – all before the law; the expansion and strengthening of Islamic brotherhood and public cooperation among all the people.”126 All citizens enjoy equality in terms of their rights and obtaining these rights are legally guaranteed. Morals and relations among people in day to day life are ensured by law according to Islamic principles.

Addressing the issue of religion which is considered a high ranking priority in Islamic countries and specifically Iran which bases its formation and revolution on that issue is clearly stated in Article 12:

The official religion of Iran is Islam and the Twelver Ja’fari School (in usual al – Din and fiqh) and this principle will remain eternally immutable. Other Islamic schools, including the Hanafi, Shafi’i, Maliki, Hanbali, and Zaydi, are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy official status in matters pertaining to religious education, affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. In regions of the country where Muslims following any one of these schools of fiqh constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, are to be in accordance with the respective school of fiqh, without infringing upon the rights of the followers of other schools.127

Not only does the Twelver Ja’fari School enjoy the full recognition of the State, but also the other Islamic Schools are officially and legally acknowledged by the State. Citizens affiliated to other schools are ensured the right to worship, and participate in religious ceremonies. At the same time all legally related issues that differ among the religious schools such as marriage and inheritance are recognized.

125 Iran Constitution, preamble.
126 Id. art.3.
127 Id. art. 12.
Muslims from other Islamic Schools are not the only group who are guaranteed respect and recognition from the Islamic Republic of Iran. Others who are not Muslim are also respected and recognized by Quranic traditions. Article 14 articulates this clearly:

In accordance with the sacred verse; (“God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes” [60:8]), the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.\(^\text{128}\)

Consequently and logically, if non Muslims are ensured these rights and freedom, it is by default that relations and attitudes towards any person in the State are with full respect and appreciation regardless of religious background.

In addition to respect for different religious backgrounds, languages of regional and tribal groups are protected as well. This is articulated in Article 15:

The official language and script of Iran, the lingua franca of its people, is Persian. Official document, correspondence, and text – books, must be in this language and script. However, the use of regional and tribal languages in the press and mass media, as well as for teaching of their literature in schools, is allowed in addition to Persian.\(^\text{129}\)

Thus, people from specific tribal groups that speak languages other than Persian are free to lawfully teach this language. Moreover, tools of communication among these groups such as the press and other forms of media are welcomed and approved by the State.

Concretely and clearly stated, ethnic groups are guaranteed equal enjoyment of rights regardless of any basis for distinction. Article 19 outlines this stating that: “All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; color, race, language and the like, do not bestow any privilege.”\(^\text{130}\) As a result, an ethnic minority cannot be deprived of any rights given to the majority.

In a practical way of rights’ enjoyment, each specific right must be protected and never be attacked. Article 22 explains “the dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.”\(^\text{131}\)

\(^{128}\) Id. art. 14.
\(^{129}\) Id. art. 15.
\(^{130}\) Id. art. 19.
\(^{131}\) Id. art. 22.
To guarantee the right of belief and religion, Article 23 ensures that no one is under threat for having a definite belief. The article states: “the investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief.” Not only does any person have the right to have a certain belief, but also any kind of investigation or inquiry is not allowed by law.

Iran’s constitution guarantees that people should not violate public or others rights during exercising of their own rights. Article 40 explains that: “No person may exercise his own rights as a means of constraining others or violating the public interest.” Therefore, people should respect and take into consideration others’ rights while enjoying their own. This is legally binding in the State’s constitution.

Freedom of expression as a human right is constitutionally guaranteed and Iran is bound to assure this right. Article 24 clearly states that "Publications and the press have freedom of expression except when it is where there is infringement of the basic tenets of Islam or public rights. In this respect detailed provisions will be laid down by law." Furthermore, freedom of association is legally ensured within the Iranian system as well through Article 26 of the Constitution which states:

Political parties, societies, political and craft associations, and Islamic or recognized minority religious associations may be freely brought into being, provided that no violation is involved of the principles of independence, freedom, national unity, Islamic standards, and the foundations of the Islamic Republic. No person may be prevented from joining, or compelled to join, one of the above.

People should not be deprived of having an equal opportunity to work and this is clear through Article 28 which explains this right as:

Every person is entitled to choose the employment he wishes, so long as it is not contrary to Islam or the public interest or the rights of others. The Government is bound, with due regard for the needs of society for a variety of employment for all men, to create the possibility of employment, and equal opportunities for obtaining it.

So, the government must assure job opportunities and at the same time ensure the equality amongst its population.

Iranian people regardless their religious sect have the legitimacy to enjoy full citizenship rights. This is acknowledged by the constitution of the state and therefore there is no justification for any deprivation of these rights. Thus, the only exception to such inviolability of people’s rights is the case of being guilty which requires this kind of sanction according to the law.

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132 Id. art. 23.
133 Id. art. 40
134 Id. art. 24
135 Id. art. 28
IV. Islamic Frame for the Distinction between Shi’a and Sunni Muslims

Sunni and Shi’a are the major sects of Islam. The distinction between both of them has historical roots while at the same time reflects political interests. This distinction over the years reflects theological differences. These political interests and the theological differences have affected the relationship between the Sunni and Shi’a in a negative way.

Islam as a religion emphasizes humane relations among all human beings. This is embodied in the Holy Quran and the Prophet Mohamed’s sayings. Furthermore, since Islam worked as a political system in the period of the Prophet and during the Islamic Caliphate, it has political principles that governed a broad empire. That empire embraced different and distinguished races and origins, and a kind of harmony was maintained governing that huge number of human beings. There were specific principles and rules by which effective control was exerted. These principles in one way or another relate to Islam itself. Given this, Muslim states should use that experience in dealing with their people especially if they embrace different origins and ethnicities. This goes for Islamic sects as well because if it applies among religions it should also work within the same religion.

Both Iran and Bahrain are Islamic states that derive their legal system from Islamic law and Islamic principles. Islamic principles of politics were applied by Prophet Mohamed practically. One of these principles is equality among all Muslims. This principle says that all Muslims are completely equal in rights regardless of color, race, language and nationality. There was no discrimination within the Islamic state based on any discriminatory criteria.

A. Primary sources for non discrimination among Muslims

In the first source of Islamic principles, the Holy Quran details the way people should deal with each other according to Quranic instructions. For example, Al Hugurat Sura states this in two verses:

Indeed, the believers (whose hearts believe in Allah and His Messenger) are an association of brothers. So reconcile your brothers (for the sake of brotherhood of faith), and be pious to Allah.”

137 Id. at 37
138 Id.
139 Id. at 39
140 Id
141 Id.
142 Id.
143 Id.
144 Id.
145 Holy Quran, Sura No. 49, Al Hugurat, Verse 10.
And “O people, we created you equal from the union of a pair, male and female (Adam and Hawwa’ – Adam and Eve), and we made you races and tribes to get to be acquainted with each other (and cooperate with each other). The most honorable of you with Allah are the most pious. Allah is All – Knowing and All – Cognizant.”

The Al Baqra Sura, chapter, the first chapter in Quran and embody most of the Islamic traditions. One of the basics in this Sura that has a concrete relation to freedom of religion says: “There is no compulsion in religion.”

The second primary source of Islamic principles that handles the issue of equality and compassionate relations among people is Prophet Mohamed sayings. In one of his hadiths (Sayings), the Prophet says “God does not look at your images, features, nor to your money, but looks at your hearts and your doings.” All Muslims are brothers no one is better than the other unless one is more pious than the other.

And in another saying that clearly demonstrates the equality among all Muslims who follow the same basic pillars of Islam: “O people, As God in oneness, Arabs are not better than foreigners and foreigners are not better than Arabs, and black is not better than red, and red is not better than black unless they are more pious.” Whoever says the Shehada (Admitting that Allah is the only God and Mohamed as his Prophet) and prays to the same Qebla (the heading of prayer), and eats Zabiha (slaughterous) is a Muslim and has all Muslim’s rights and must do all what Muslim must do.

Clearly, the Holy Quran and the Prophet Mohamed encourage people to deal objectively with each other and not to discriminate. What is really significant and useful for the present case is that if anywhere the principle of nondiscrimination and empathy is needed in dealing with other human beings regardless of their race and origin, it is mandatory and faithfully essential to apply this principle when dealing with Muslims from different sects.

B. Islamic Fatawa about Shi’a and Sunni Conflict

Islamic principles as outlined in the previous section stress the non discrimination principle generally and at the same time the humane treatment towards all humankind. In order to lessen the distinction between the Shi’a and Sunni, a number of fatawa (religious opinions) have been released by scholars. Also, these fatawa formulate the ideology of each group towards the other groups which is reflected in their behavior together. The credibility of fatawa as a religious opinion by Muslim scholars and clerics is based on the integrity and authority of

146 Id. Verse 13.
147 Holy Quran, Sura No. 2, Al Baqra, Verse 256, Aya 1.
148 Supra note 136 et 39
149 Id.
150 Id.
that scholar. Many fatwa which are considered religiously binding have been declared by prominent scholars regarding the split between Shi'a and Sunni Muslims.

1. Sheikh Mahmood Shaltoot, former Head of Al Azhar, fatwa for distinction between Sunni and Shi'a:

The Grand Imam of Al Azhar released an official fatwa that addresses the distinction between Shi'a and Sunni Muslims in terms of the how they should deal with each other according to the Islamic principles. The fatwa reads:

"IN THE NAME OF ALLAH, THE BENEFICENT, THE MERCIFUL Text of the Verdict (Fatwa) Issued by His Excellency Shaikh al-Akbar Mahmood Shaltoot, Head of the al-Azhar University, on Permissibility of Following "al-Shia al-Imamiyyah" School of Thought, His Excellency was asked:

Some believe that, for a Muslim to have religiously correct worship and dealing, it is necessary to follow one of the four known schools of thought, whereas, "al-Shia al-Imamiyyah" school of thought is not one of them nor "al-Shia al-Zaidiyyah." Do your Excellency agree with this opinion, and prohibit following "al-Shia al-Imamiyyah al-Ithna Ashariyyah" school of thought, for example? His Excellency replied:

Islam does not require a Muslim to follow a particular Madh'hab (school of thought). Rather, we say: every Muslim has the right to follow one of the schools of thought which has been correctly narrated and its verdicts have been compiled in its books. And, everyone who is following such Madhahib [schools of thought] can transfer to another school, and there shall be no crime on him for doing so. The Ja'fari school of thought, which is also known as "al-Shia al-Imamiyyah al-Ithna Ashariyyah" (i.e., The Twelver Imami Shi'ites) is a school of thought that is religiously correct to follow in worship as are other Sunni schools of thought. Muslims must know this, and ought to refrain from unjust prejudice to any particular school of thought, since the religion of Allah and His Divine Law (Shari'ah) was never restricted to a particular school of thought. Their jurists (Mujtahidoon) are accepted by Almighty Allah, and it is permissible to the "non-Mujtahid" to follow them and to accord with their teaching whether in worship (Ibadaat) or transactions (Mu'amilaat)." 151

2. Sheikh Hamed Al Ghazali fatwa for the Exclusion of any Muslim

The most severe form of rejection in terms of faithful matters is to exclude somebody from Islam which is called takfeer (exclusion from Islam). Hamed Al Ghazali released a fatwa that determines the conditions and the basis on which one is included or excluded as a Muslim from Islam.

Abi Hamed Al Ghazali is one of the prominent Muslim scholars who warned Muslims of Takfeer of somebody who follows different Muslim schools of teaching. 152 This is because a Muslim who declares Shahada, "the first pillar of Islam, is a real Muslim which is the most

important element because faith in Islam has three primary sources: believing in Allah, the Prophet and the Day of Judgment.\textsuperscript{153} To exclude a person is a sin which cannot be practiced unless there is clear evidence derived from Shari'a law.\textsuperscript{154}

3. Sheikh Mohamed Abdo Fatwa for Takfeer

Another fatwa addressing the exclusion of a Muslim from Islam is released by Sheikh Mohamed Abdo. In his opinion about takfeer, he mentioned that a major element in Islamic law is to be away of takfeer as if in a case that has many sides to exclude somebody from Islam and has only one side that says he or she should not excluded from Islam, the one side of faith the side that should be followed not the other sides.\textsuperscript{155}

4. Ali's statement regarding the Starting of the conflict between Muslims' groups:

Ali Ibn Abi Taleb whom Shi'a Muslims refer themselves to him mentioned a clear statement about this point.

Ali has declared the faith and brotherhood towards those who fought him as the conflict was because of politics and authority not in theology of Islam.\textsuperscript{156} He said that, we have met with oneness God, oneness Prophet and oneness goal.\textsuperscript{157} We are not more religious than them and neither are they.\textsuperscript{158} The only thing we differ in the killing of Othman and we were not responsible for it at all.\textsuperscript{159}

On the other side, some Shi'a scholars exclude Sunni of Islam.\textsuperscript{160} For example, Sheikh Mofied says that Imami' people agreed that those who fought Ali in the beginning are not Muslims and excluded from Islam.\textsuperscript{161} And in some cases they generalize the issue of exclusion to all non Shi'a Muslims.\textsuperscript{162} They also mentioned that none is considered Muslims except Shi'a.\textsuperscript{163}

These fatawa represent an important element in articulating the theological element in the intense relations between Shi'a and Sunni Muslims. They also shed light on how each group sees the other from the religious point of view which is reflected in the treatment of both groups.

\textsuperscript{153} Id. at 85.
\textsuperscript{154} Id.
\textsuperscript{155} Id. at 86.
\textsuperscript{156} Id. at 104
\textsuperscript{157} Id.
\textsuperscript{158} Id.
\textsuperscript{159} Id.
\textsuperscript{160} Id. at 108
\textsuperscript{161} Id.
\textsuperscript{162} Id.
\textsuperscript{163} Id.
C. Split between Shi'a and Sunni Muslims

This split between Shi'a and Sunni Muslims which seems to have a theological distinction has in origin political interests. These interests have led to an inherited negative attitude toward each other.

As an Arabic term, Shi'a refers to one's supporters and his followers. In Islamic ideology, it means Ali Ibn Abi Taleb’s followers, supporters and Prophet Mohamed’s family in general. The rise of Shi'a as a group started when Othman Ibn Aafan became the third Caliph, and began hiring relatives. These relatives were rejected by supporters of Ali Ibn Abi Taleb, the husband of Fatima the daughter of Mohamed and were called Shi'at Ali. Thus, the origin of the split between Shi'a and Sunni Muslims refers to Ali after the death of the Prophet Mohamed in 632. After the death of Prophet Mohamed, the idea of successorship appeared. The problem started when some groups of Muslims asked for elections to choose the successor to Mohamed while other groups said that Mohamed himself had designated Ali, his cousin and son in law to be his successor.

Shi'a historians refer to that meeting as the formation of the Shi'a. Yet, other historians reject the idea that Shi'a formed in that meeting and they refer to Ja'far Al Sadek from 699 to 765 and Hesham Bin Al Hakam for the idea of Shi'a as it is known now.

For Sunni Muslims, Ali is the fourth Caliphate who followed Abu Bakr from 632 to 634, Umar from 634 to 644 and Uthman from 644 to 656. Shi'a Muslims believe that Ali should have been the first Caliphate not the fourth due to his relationship to Prophet Mohamed as his cousin and son in law. Ali came after the murder of Uthman who was killed while he was praying. A group of Muslims headed by Aisha, Prophet Mohamed’s wife, accused Ali of not passing judgment to Uthman’s killers.

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164 Mohamed Emara, Islamic Theological Movements, 2007
165 Id at 201
167 Supra note 80 at 1.
169 Id. at 53
170 Id
171 Supra note 151 at 1.
172 Id
173 Id.
174 Id.
and Ali’s supporters. This battle called the Camel Battle in 656 ended with the victory of Ali’s supporters group.

This was not the end of the conflict between the two groups since Uthman’s cousin, Mu’awiyah Ummayad, the governor of Damascus, refused to accept Ali in the Caliphate. They fought each other again in another battle called Suffin. This battle ended with arbitration based on Quran verses between both sides which was not accepted by Ali’s supporters and led some of them to kill him for that in 661.

After Ali’s death, those who had asked for the principle of legitimacy and those who asked for succession became hostile towards each other. “They finally led to the outbreak of hostility between the Arabs of Kufa and Damascus, and as a consequence Hysayn, the son of Ali, was killed. This event, still commemorated lamentably by many Shi’a Muslims annually, crystallized the Sunni – Shi’a split which has persisted for centuries.”

Mu’awiyah became Caliph and Hassan, Ali’s son, accepted a pension for not being a caliph. After his death by poison, his brother Hussein waited till the death of Mu’awia and led an army against Yazid, Mu’awiyah’s son, who wanted to be a caliph after his father. This battle called Karballa in which Hussein was killed and the Ummayad State was formed by Yazid. This division between Shi’a and Sunni Muslims was clear and that distinction was set.

Therefore, Shi’a in its beginning was formed as a political party. The followers were supportive of Ali and wanted him to be the Caliph because he was a relative of the Prophet Mohamed. Shi’a as an Islamic sect is distinguishable not because of its theological approach but because of this political conflict since the death of Prophet Mohamed and attempts to install a successor from the Prophet’s family.

This accusation and opposition by Muslims towards Ali was transformed into an internal battle between the two groups of Muslims, Ali’s opposition

175 Id.
176 Id.
177 Id.
178 Id.
179 Id.
181 Id. at 53.
182 Id.
183 Supra note 151.
184 Id.
185 Id.
186 Id.
187 Supra note 164 at 208.
188 Id.
Shi'a has the concept of Imam's theory which got its principles from Shi'a attempts to control and lead the Islamic community since the death of the Prophet Mohamed that is transformed to be a political authority in the Islamic community.\footnote{189} The Shi'a have been subject to oppression since the Amawy caliphate when ongoing upheavals were met with oppression.\footnote{190} After that Shi'a decided to leave it to God and wait for a religious leader who is like the Prophet as this will be the ideal justice because he will be responsible for religious and life matters for everyone.\footnote{191} Moreover, Shi'a believe that having a religious leader is one of the primary bases of religion. They also consider it as one of the pillars of Islam.\footnote{192}

After the death of Hussein, the line of Prophet Mohammed lasted until Imam Al Askari "who had no brothers disappeared within days of inheriting the title at the age of four."\footnote{193} Shi'a did not want to admit his death, but they believed that he was hidden and he would return, but after many years this idea of his return was defeated.\footnote{194} To fill this void, some Shi'a clerics proposed a spiritual idea of a supreme Imam.\footnote{195} For example, they currently refer to Ayyatollah Khomeni as that supreme Imam of Shi'a.\footnote{196} "Shi'a believe that their supreme Imam is a full spiritual guide, inheriting some of Mohamed’s inspiration.\footnote{197} Their imams are believed to be inerrant interpreters of law and tradition.\footnote{198} In contrast, Sunni Muslims do not have a formal clergy just scholars and jurists.\footnote{199}

Shi'a has many sub - sects but there are three major ones.\footnote{200} These majors’ sects are Twelver, Zaidi and Ismaili.\footnote{201} Twelver Shi'a are the vast majority of Shi'a all over the world.\footnote{202} The Twelvers sect of Shi'a got their name from tracing descendents of the Prophet Mohamed to the twelveth Imam who disappeared.\footnote{203} Therefore, Shi'a believe that they need to live with the guidance of a religious cleric.\footnote{204} "Almost all Shiites believe in the eventual return of an imam who will lead the community till the Day of Judgment."
\footnote{205}
Contrary to this belief, Sunni Muslims do not have this religious authority. Also, Sunni Muslims do not see that Caliphs must be derived from the Prophet’s family.

For daily acts, Shi’a have different practices than Sunni. This is can be seen in the prayers and hadiths. “Shi’a have a different call to prayer, they perform wudu (washing parts of body before praying) and pray differently including placing the forehead onto a piece of hardened clay from Karbala, not directly onto the prayer mat when prostrating. They also tend to combine prayers, sometimes worshipping three times per day instead of five.”

These theological differences appeared and have endured after the violent political conflict. Because of this both sects of Islam have inherited hostile feelings which motivate them to target and attack each other even in an indirect way.

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206 Id.
207 Id.
208 Supra note 151 at 2.
209 Id.
210 Id.
211 Id.
V. Human Rights Violations that Represent False Imagination and Unreal Acceptance of the Other

The problematic issue of imagining the other is clear in human rights violations which represent the difficulty in accepting the other regardless legal provisions as drafted in states’ constitutions, international treaties and Islamic principles.

Each state has legal obligations towards its people. These obligations range from international to domestic ones. Human rights issues fall between international obligations and the superior legal instrument which is the constitution of the state. Iran and Bahrain have solid legal obligations in terms of freedom of religion, social, economic and political rights. Nevertheless, application of international obligations and execution of constitution’s provisions are awkward and reflect a negative concern towards the other in both countries.

A. Islamic Republic of Iran

The Islamic Republic of Iran is the largest Shi’a state in the Middle East. Iran has 636,000 square miles and has a population of 67 million.212 Shi’a Muslims are eighty nine percent of the population.213 Sunni Muslims compromise 9 percent and are mostly Turkmen, Baluchs, Arabs and Kurds.214 The remaining 2 percent is for other religious minorities such as Baha’is, Jews, Christians, Sabean-Mandaeans, and Zoroastrians.215

The religious basis on which Iran’s government is built on is the Shi'a Islamic doctrine.216 This doctrine gives high consideration to the Velayate Faqih, rule of the supreme jurist, who is the most qualified religious scholar as the supreme leader of the country.217 This position has been held by Ali Khamenei since 1989.218

The concept Velayate Faqih is derived from two principles. “The first principle is that divine law is the unique source of legitimacy and political authority.”219 The second one is that, while waiting for the reappearance of the Twelfth Imam, the depository and unique interpreter of divine law is the Spiritual Leader.”220 This concept is considered the cornerstone of the Islamic Republic of Iran since this Leader has all aspects of civil and political power.221

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213 Id.
214 Id.
215 Id.
216 Human Rights Watch, 2009, Iran: Freedom of Expression and Association in the Kurdish Regions
217 Id. at 6.
218 Id.
220 Id. at 5.
221 Id.
supreme leader of the Islamic revolution, Ayatollah Ali Khamene'i, heads a three-branch structure of government (legislative, executive, and judicial branches). The supreme leader is not directly elected, but chosen by a group of 86 Islamic scholars, the Assembly of Experts, who are directly elected.”

The Sunni Kurds of Iran represent 70 percent out of the whole Kurdish population in the state. Iran’s Kurdish population of about 4.5 million is concentrated in the country’s northwest regions particularly, in the provinces of Elam, Kermanshah, and Kurdistan as well as some areas in Western Azerbaijan. They are located in what is known as the Iranian Kurdistan.

Baluchis represent 1.4 million or 2 percent of Iran's population. Baluchis are mostly Sunni Muslims who live in the Iranian section of Baluchistan area which is Pakistani – Iranian area.

Another ethnic minority and at the same time a predominant Sunni Muslim group is the Turkmen. Most of the Turkmen population lives in the northern part of the country. "Originally, this made up Khorasan and Mazandaran Provinces, but redistricting resulted in the addition of Gulistan (Gorgan) Province."

Turkmen are 1.35 million; this number of people was marginalized "to simplify administrative process in view of growing population". The claim for such marginalization was due to the growing population. Yet, the main point was to "decrease the chances of ethnic identities superseding identification with the state."

The three groups who represent the Sunni minority in Iran report a wide range of human rights violations. These violations affect all aspects of life such as economic, educational, political and religious. Attaching these violations to a specific religious minority promotes the idea of depriving this group of their rights because of their religious identity. This goes back to the notion of refusal of the other to diminish that other.

222 supra Note 212.
223 id.
224 id. at 6.
225 Congressional Research Service (CRS), 2007, Iran: Ethnic and Religious Minorities
226 id. at 5
227 A. William Samii, The Nation and Its Minorities: Ethnicity, Unity and State Policy in Iran, XX Nos. 1&2, Comparative Studies of South Asia, Africa and the Middle East, 128 – 142, 2000
228 id. at 135.
229 id.
230 id.
231 id.
232 id.
1. Freedom of religion

The right to freedom of religion is guaranteed both by international law and constitutional law. Iran is obliged to respect its religious minorities especially the Sunni Muslims who are granted by the Constitution equal rights to Shi’a Muslims. Nevertheless, Iran systematically targets Sunni Muslims due to their ethnic identity which is not legally justified because even an ethnic minority is granted equal rights according to the Constitution.

Attacks on Sunni Muslims occur in mosques and are directed at both clerics, and Sunni Muslims themselves. Mosques are the official and religious symbol of Muslim worship. Sunni mosques have been destroyed or closed in many areas. Tehran, Iran's capital does not have a Sunni mosque. In terms of state control over Sunni, Sunni seminaries are firmly controlled by the state which is not the case with the Shi’a mosques. Sunni Muslims in Iran have reported that authorities have blocked a mosque that is recently built in Tehran and "the government has barred public displays of Sunni religion and culture." Furthermore, limitations to freedom of religion extended to tools of communications. For example, broadcasting does not include the Sunni call to prayer. Also, when it comes to political participation, Sunni Muslims are deprived of that because of their sect affiliation as Sunni Muslims do not have representation in the parliament compared to Jews, Zoroastrians and Assyrians.

The government rationale for such discrimination is because of the ethnicity of those Sunni Muslims who have little in common with Teheran. On the contrary, they have good relations with their co-ethnic groups across the board which represents a threat to the government and therefore such limitation is useful. The government claims that "participating in mass religious activities, or if they had independent leadership figures, such as Sunni prayer leaders, they might demand greater local autonomy and act against the state." This anti-Sunni discrimination is signified in "unnecessary interventions in religious affairs occur on the part of some low level functionaries, for instance in Sunni mosques and school affairs which causes irritation to the Sunnis."

233 Id. at 131.
234 Id.
235 Id.
236 Id.
237 Supra Note 225 at 6.
238 Supra Note 227 at 131.
239 Id.
240 Id.
241 Id.
242 Id.
243 Id. at 135.
Moreover, a clear picture of violence against Sunni Muslims is evident. For instance, a Sunni seminarian was killed after being beaten in Zahedan. Also, during the fifth parliamentary election in 1996, two Sunni clerics were murdered.

Additionally, Sunni Muslims clerics who are Kurds have suffered human rights violations as well. In 2008, Ayoub Ganii, a cleric, went missing for thirteen days after delivering a Friday prayer sermon. He had criticized "the government's arbitrary exclusion of candidates from upcoming parliamentary elections." People demonstrated asking for his release or threatened to keep protesting. The government denied responsibility for his disappearance. Because of the threat of demonstrations by mosque members and other people, he was dropped in the street by an unknown car in a poor physical condition attributed to torture. He was released from detention but was in such a poor state he failed to recognize his wife and son.

Kurds who are active in Sunni religious movements have been under prosecution by the government. For example, founder of the Maktabe Koran School, Ahman Moftizadeh was arrested and sentenced to ten years on jail for unknown charges. The government has often accused Kurdish religious and political activists of "endangering national security through separatist activities" without official charges. After the death of Moftizadeh, the government arrested many followers of the Maktabe Quran during their celebrating on the last night of the Holy month of Ramadan.

Islamic teaching has not escaped of State’s attack since "Sunni leaders reported bans on Sunni religious literature and teachings in public schools, even in predominantly Sunni areas."

As we see, Sunni Muslims as a religious minority are targeted in their religious affiliations at worshipers, scholars, members of religious movements and members of a community. They also are subject to torture because of such affiliation. What is striking about this situation is that they are legally recognized by the government. Yet, the state still does not want to apply

\[244\] Id.
\[245\] Id.
\[246\] Id.
\[247\] Amnesty International Publications 2008, Human rights abuses against the Kurdish minority
\[248\] Supra note 216 at 26.
\[249\] Id
\[250\] Id
\[251\] Supra note 247 at 8.
\[252\] Supra note 216 at 26.
\[253\] Id.
\[254\] Id.
\[255\] Id.
\[256\] Supra note 212.
its rules that it drafted itself. Neither international, nor domestic, nor Islamic law can justify Iran's anti-Sunni actions.

2. Freedom of expression

In addition to the government perpetrated acts that are anti-Sunni Muslim, Sunni Muslims are under different types of state violations that do not have any justification. The clear message that the state wants to convey is that there is an ethnic threat coming from these minorities, but the indirect message is an anti-sectarian one. One of these regularly occurring violations is freedom of expression.

Violence targeting Kurds has increased after President Ahmedinejad's election. That violence was clear in a dramatic incident whereby Iranian security forces shot a Kurdish opposition activist and then dragged his body in the streets behind a jeep. After that a lot of Kurds demonstrated which was met by the firing of light and heavy weaponry by security officers. This resulted in many Kurds being killed with marginal acknowledgement from the government regarding the exact number. What is more, government officials started to harass journalists and to close publications that discussed Ghaderi's killing.

Not only did Iran commit a violation by killing Ghaderi, it also deprived people the right to protest to such an incident which is a double violation towards its people in terms of killing, torture and prohibiting the right of expression. And it concurrently controlled other channels of expression that published that case. This bundle of violations has only one target, which is oppression.

Freedom of expression is limited in other forms. Many Kurdish publications have been closed which have correlated with the arrest of journalists and subsequent unfair trials. Furthermore, Kurds face difficulty in publishing books in their language. Such publication requires approval by the Ministry of Culture and Islamic Guidance. Although this process was simplified during the reign of President Mohamed Khatami, it has become more complicated and limited with President Ahmadinejad.

Freedom of expression even to express basic needs such as water is prohibited as well and can lead to arrest. "Members of the small Sunni Azerbaijani minority were arrested in

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257 Amnesty International, 2006, Iran new government fails to address dire human rights situation
258 Id. at 8
259 Id.
260 Id.
261 Supra note 216 at 10.
262 Id.
263 Id. at16.
264 Id.
265 Id.
February when they protested against cuts in water supplies. So, Iran does not respect freedom of expression. Rejecting unfair killing, degrading humanity, expressing basic living needs are all immaterial to the state and should not be articulated or communicated.

3. Freedom of association

Excluding people and marginalizing them is one way of rejecting them and seeing them as an undesired entity. In this way, many channels of association are blocked for Sunni Muslims in Iran.

Suspicion is enough for the government to arrest, imprison and sentence to death people who can be innocent. "Members of the Kurdish minority suspected of belonging to banned armed opposition groups were arrested and imprisoned. Some were sentenced to death and at least one was executed, possibly in reprisal for a spate of attacks on officials in Kordestan province in September."

Also, the government disregards Sunni Muslims' lives when it comes to political activity. "In Sistan-Baluchistan province, home to the mostly Sunni Muslim Baluch minority, violence intensified amid increasing clashes between the security forces and members of the People's Resistance Movement of Iran (PRMI), an armed political group also known as Jondallah.

On 18 October, at least 42 people, including senior Revolutionary Guards officers and civilians, were killed in an attack claimed by the PRMI."

Furthermore, parliament as a channel to democracy and people's representation is a key element in state's attitude towards Sunni Muslims. While Christian, Jewish, and Zoroastrian minorities have a specific number in the parliament. The Sunni Turkmen minority do not enjoy that privilege, although they are officially and legally recognized. Another critical issue is the broadcasting of the state during students' demonstration in 1999 since radio broadcasting used a mix language in the Turkmen dominated area. This in turn was a kind of isolation to people in this area.

267 Id.
268 Id.
269 Id.
270 Id.
271 Id.
272 Id.
273 Supra note 227 at 135.
274 Id.
For the visible political participation and public role of Sunni Muslims in Iran, there is no local Sunni governor, deputy governor, judicial official or religious official there.275 A complaint by one author refers to "Pan – Shiism" effectively excluding a substantial number of people from the united body of Iran with the result that the Iranian Sunni community's trust is weakened."276 Also, in terms of government's actions towards Baluchis people who are mainly Sunni Muslims, it prevented the attempts of the creation of political organization that presents Baluchis people and any of their interest.277 Moreover, during the spring 2000 parliamentary election, the Kurdish areas experienced unrest because "the hard – line Guardians Council overturned the results in some of the constituencies."278 One of the losing candidates in the Kurdish province said that broadcasting was not objective since it favored his opponents.279

The legitimacy of Sunni political participation in the community is not absent. Law has an element in political participation of Sunni Muslims since "by law religious minorities are not allowed to be elected to a representative body or to hold senior government or military positions, with the exception that five of a total the 290 seats in the majles (parliament) are reserved for religious minorities."280

Iranian government presented a solution that thought will be accepted by Sunni Muslims. This solution is that "Sunnis do not have reserved seats in the majles, they were allowed to serve in the body. Sunni majles deputies tended to be elected from among the larger Sunni communities."281 The presidency of the state is restricted to the majority of Iran as "members of religious minorities were allowed to vote; however, no member of a religious minority, including Sunni Muslims, is eligible to be president."282 Also, being a majority in their province is not a concrete justification for the state. Sunnis have noted the under representation of Sunnis in government-appointed positions in the provinces where they form a majority, such as Kurdistan and Khuzestan Provinces, as well as their inability to obtain senior government positions.283

Sunni Muslims are poorly represented in Iran either by themselves in political groups or in the state's body. As a result, their voices have not been heard and their needs and demands not met. Consequently, they are increasingly marginalized for no other reason than being members of a religious group that is different from the larger one.

275 Id. at 133.
276 Id.
277 Id.
278 Id.
279 Id.
280 Supra Note 212.
281 Id.
282 Id.
283 Id.
4. Economic and social rights

Members of any community should be ensured life’s basic conditions equally. These conditions should be humane and match the dignity of human beings which is the responsibility of the state. This responsibility should be fair and equal to all members of that state no matter where they live in that state. Nevertheless, Sunni Muslims face daily problems that have economic and social aspects.

One group of Sunni Muslims, the Baluchis, live in underdeveloped areas and face the problem of unemployment which results in illegal activities such as smuggling. Moreover, "Tehran has forcibly relocated Baluchis to remote areas, while encouraging non-Baluchis from other provinces to replace them through the provision of incentives like free land, government jobs, and subsidized housing."284

The government has been neither active nor responsive when it comes to Baluchis’ requirements. When Baluchis submitted a letter to the president to explain the status of their land which depends on agriculture, the government did not even discuss this letter for a month and when they did, the president told his deputies "they should exploit the province's resources to promote employment, investment, and production."286

Kurdish Sunni Muslims are not unaffected by government indifference. Kurds suffer from a wide range of disadvantages such as lack of water, electricity and unsatisfactory reconstruction efforts.288 The inequality of resource distribution and refusal to react to shortages of basic needs are all irresponsible actions by the state and shows harmful intent towards Sunni Muslims. Moreover, this kind of neglect will lead to the committing of illegal acts which will be punished by law.289

5. Right to education

All states have weakness in their policies, but if these weaknesses are concentrated on one side, this is questionable. Education as a basic right of all people is not so for Kurdish women. The illiteracy rate for women in the entire state is 25 percent, 43.3 percent in the Kurdish province.290

284 Supra note 227. at 134.
285 Id.
286 Id.
287 Id.
288 Amnesty International, 2006, Iran New government fails to address dire human rights situation
289 Id. at 8.
290 Id.
291 Id.
Zahedan for alleged membership in the militant group People's Resistance Movement of Iran.\textsuperscript{292}

Sunni Muslims in Iran are subject to dual human rights violations since they are a religious minority in addition to being an ethnic minority. The intensity of not accepting them through targeting their religious and citizenship rights is evident. In spite of its legal obligations the Iranian government has, its attack on Sunni Muslims does not stop which has no rationale.

\textbf{B. Kingdom of Bahrain}

Bahrain is not better than Iran in terms of accepting a specific group within its borders. Yet, the Bahraini case is an extraordinary example of the idea of accepting the other and respecting this other. This is mainly because this other in Bahrain is the majority of the population who are dominated by the minority. Shi'a Muslims in Bahrain are the majority of the population facing discrimination from the Sunni Muslim ruling government. This attitude is reflected in human rights violations of international law and domestic law. This state of affairs exemplifies the notion of targeting the other because of perceived difference.

Bahrain is 231 square miles and has 1.05 million in population.\textsuperscript{293} Ninety nine percent of this population is Muslim and the remaining one percent is compromised of Jews, Christians, Hindus and Baha'i's. Sixty to seventy percent of Muslims in Bahrain belong to the Shi'a sect of Islam.\textsuperscript{294}

In terms of the official procedures that relate to religion, religious identity is not mentioned on national identity documents.\textsuperscript{295} The application for a birth certificate records child's religion, but it does not record the sect.\textsuperscript{296} At the same time, the authentic birth certificate does not mention the child's religion.\textsuperscript{297}

Human rights violations that target Shi'a Muslims in Bahrain include social, economic, civil and political rights.

1. Right of Education

In addition to Kurds, Baluchs face the same attitude of limiting right to education as “in 2008 authorities executed Baluch journalist and education activist Yaghoob Mirnehad in Education is one of those rights that should be assured to every one and this right in Bahrain is found in the State's constitution and State's obligation under international law.

\textsuperscript{294} Id.
\textsuperscript{295} Id.
\textsuperscript{296} Id.
\textsuperscript{297} Id.
Right of education is one of the rights that are entrenched in Bahraini constitution. Education in Bahrain, which Islamic studies are a part of, all public schools have Islamic studies as a mandatory course.\textsuperscript{298} The Maliki School of Sunni jurisprudence is the actual basis for the 17 year old curriculum that does not include the other Shi’a school of jurisprudence which is Ja’afar traditions.\textsuperscript{299} Shi’a are not present in the Ministry of Education whether as leaders or head teachers who are responsible for Islamic studies and monitor other teachers.\textsuperscript{300} Shi’a Islamic teachers of Islam are not allowed to teach Shi’a traditions since school administration obliges them to follow the assigned curriculum.\textsuperscript{301}

Moreover, this curriculum is prepared by a committee that is formed by Sunni only.\textsuperscript{302} This committee has a sub committee formed of Shi’a teachers and clerics in order to develop the needed Islamic studies for the Ja’afar Institute "which is the only publicly funded institution in which teachers can legally discuss Shi’a beliefs and traditions."\textsuperscript{303}

Admitting the existence of a person should be associated with facilitating his or her matters. As long as Sunni Muslims are aware of the reality of Shi’a Muslims and acknowledge their religious school, other support should be provided such as teaching, curriculum and scholars in order to be an actual and effective acknowledgment.

\textbf{2. Right of Employment}

Finding a job and to be employed is a constitutional right to all people living in Bahrain. This right must be enforced and no one should be excluded from that right. Nevertheless, Shi’a Muslims in Bahrain are deprived of that right. While Shi’a represents the majority of the population, they experience low socio – economic status and have unemployment rates which are higher than Sunni Muslims.\textsuperscript{304}

Although Sunni Muslims are the minority of the state, they are preferred over the Shi’a Muslims especially in sensitive positions such as the military.\textsuperscript{305} Not only are sensitive positions reserved for Sunni Muslims, but also senior civil services recruit Sunni Muslims.\textsuperscript{306} Moreover, promotions in the work place favor Sunni more than Shi’a.\textsuperscript{307} Only a Small number

\begin{itemize}
\item \textsuperscript{299} Id.
\item \textsuperscript{300} Id.
\item \textsuperscript{301} Id.
\item \textsuperscript{302} Id.
\item \textsuperscript{303} Id.
\item \textsuperscript{305} Id.
\item \textsuperscript{306} Id.
\item \textsuperscript{307} Id.
\end{itemize}
of Shi’a has posts in defense and internal security. This is in spite of continued assurance from the police force that religious affiliation is not considered while appointing candidates. Branches of security force that employ Shi’a Muslims are traffic police and fledgling community police.

Depriving people of the right to work and from having a sustainable life cannot be accepted. What is more, segregation among people for their religious affiliation which has been acknowledged conveys the message that this group of people is not really accepted without explicitly saying. This is irresponsible and puts the state in a situation that is legally and ethically contradictory as each state has a bundle of legal obligations which must be followed.

3. Economic and Social rights

Complementary to employment problems that Shi’a Muslim face in Bahrain is housing. Around 53,000 Shi’a Muslims are waiting for shelter because they cannot afford a house. The government has responded to that problem in a statement referring to the growing population and its intentions to go “down the list by name, without any other considerations.” Yet, Shi’a Muslims do not believe that claim and suspect discrimination. One case illustrating the problem is the case of a Shi’a Muslim who applied for a house from the government twenty years ago. He applied for a house before his son was born and now his son might decide to marry which will mean another housing problem.

A member of the Bahraini Shi’a opposition affirms that discrimination is a real factor in the housing area since the ruling Kalifa family own extensive lands in the kingdom. Although there is a lack of data about land ownership in the kingdom, the ruling family holds land on the north coast of Bahrain which is allocated for investment purposes by the government. For example, Emar Bahrain, the owner of Bahrain Financial Harbor, has concrete ties with the Sunni royal family.

Leaving people homeless is not justified under any circumstances and it is even more unacceptable if it has a biased intention. Shi’a Muslims in Bahrain are Bahraini citizens and

308 Id.
309 Id.
310 Id.
311 Id.
312 Id.
313 Id.
314 Id.
315 Id.
316 Id.
317 Id.
318 Id.
depriving them of their humanity by leaving them in such conditions is against domestic and international laws and Islamic principles.

4. Freedom of expression

Freedom of expression in Bahrain is restricted and this is even more intense for Shi'a Muslims. Although Bahrain amended its press and publications law in 2008, the Law is still before the House of Representatives. 319 Bahrain remains sensitive to any criticism of the monarchy which results in negative actions by the government towards anyone criticizing it. 320 A number of websites, blogs and forums were blocked by the Ministry of Information and Culture under the claim that these channels incited hatred and sectarian violence. 321 For example, "a Shia cleric who is a member in an opposition party was temporarily banned from giving Friday sermons in October because of his affiliation. 322

Any kind of attention given to sectarian issues in Bahrain is repressed by the government. 323 This censorship of the government towards sectarian matters extends to the limit that officials of the government contact media members and asking them to stop writing or mentioning the sectarianism issue. 324

5. Elections and Political Participation

Political participation is a kind of equality among all citizens. The legislative authority in Bahrain is based on a bicameral system with a "legislative body consisting of an upper house, the Shura Council, whose members are appointed by the king, and a lower house, the elected Council of Representatives." 325 In October 2010, parliamentary elections, Shi'a Muslims won 18 seats. 326 Yet, before the election, the government played an active role in harassing Shi'a Muslims. Around 200 or more Shi'a Muslims were accused of violent crimes. 327 Of this number, 23 of them were charged with being members of a terror network according to a

320 Id.
321 Id.
324 Id.
325 Supra note 322.
326 Id.
327 Id.
2006 counterterrorism law.\textsuperscript{328} Two of them were leaders of opposition groups that called for a boycott of the elections.\textsuperscript{329} Additionally, the government banned newsletters and web sites related to opposition parties.\textsuperscript{330} International observers were not allowed to monitor these elections.\textsuperscript{331}

6. Changing Kingdom’s Demographic

A very obvious example of the difficulty of accepting the other is a strategy followed by the Bahraini government. This strategy works to attach foreigners to the state instead of its people who are religiously different. The goal of this strategy is to change the demography for the sake of Sunni Muslims in order to equate their number with the Shi’a Muslims. Naturalization is clearly described in the law.\textsuperscript{332} Nonetheless, implementation of it is biased and not transparent as naturalization’s rules are ignored by the government.\textsuperscript{333} The main reason for that is to change the demographic of the Kingdom to the benefit of Sunni Muslims who are the minority of the state.\textsuperscript{334} Shi’a Muslims who apply for naturalization face delay in the proceedings, but Sunni Muslims who apply for it from neighboring states are welcomed and expeditiously granted citizenship.\textsuperscript{335} Citizenship is in a part of state’s concern and represents its view. Thus, preferring foreigners and granting them citizenship just to balance the demographic element is a severe attack on Shi’a Muslims.

7. Torture and Inhumane treatment

Not only are Shi’a Muslims detained under claims by the government, but also they are subject to ill-treatment and torture during their detention. Hassan Meshaima, Abd al Abd al-Jalil al-Singace and Mohammad Habib al-Muqdad, three Shi’a activists who appeared before Bahrain High Criminal Court “were accused of financing and planning acts of violence with the aim of overthrowing the government.”\textsuperscript{336}

Those Shi’a activists were not alone. They also have 32 colleagues with them.\textsuperscript{337} Thirteen out of them reported that they were tortured with electric shocks, beaten and spent a prolonged time with bound hands and feet.\textsuperscript{338}
was detained reportedly at the headquarters of the National Security Agency in Bahrain’s
capital, Manama and when he attended before the public prosecutor, his lawyer reported that
his client had physical signs of torture.\textsuperscript{339}

All of them were charged with “forming an illegal organization aiming to overthrow the
government and dissolve the constitution, inciting people to overthrow and change the
political system of the country, fundraising and planning terrorist acts, and other offences.”\textsuperscript{340}
Furthermore, the Public prosecutor banned journalists and publications during the
proceedings, whoever violated the ban faced imprisonment for one year under the penal
code.\textsuperscript{341}

Although they were given a royal pardon, respective authorities were not able to investigate
torture allegations properly.\textsuperscript{342}

If unlawful detention is a bad thing, torture and ill – treatment during that detention is even
worse. Degrading people of their humanity and subjecting them to torture is an international
crime and there is no rule on earth which can justify that.

8. Arbitrary Interference with Privacy

Personal integrity is reflected in privacy and breaching this integrity should not be by
authorities and governments whose responsibility is to preserve it. Shi’a Muslims in Bahrain do not enjoy privacy rights such as email, telephone calls, and
general correspondences.\textsuperscript{343} Privacy is guaranteed by law and such intervention must be by a
court order.\textsuperscript{344} The problem is that Shi’a Muslims could not prove that against security
force.\textsuperscript{345} Personal lives should be respected and should not be under supervision as long as
those people are not under any legal claim.

The Bahraini government has no justification for its negative approach towards Shi’a Muslims
who are granted full respect and acknowledgment by Islamic, international and domestic law.

For instance, Habib al – Miqdad who is a Shi’a cleric “had been suspended by the wrists for several hours and punched by security officials while he

\textsuperscript{339} Amnesty International, September 2010, Urgent Action, \textit{Detained Shi’a Muslims at Risk in Bahrain}.
\textsuperscript{340} Id.
\textsuperscript{341} Id.
\textsuperscript{342} Supra note 319.
\textsuperscript{343} Supra note 322.
\textsuperscript{344} Id.
\textsuperscript{345} Id.
IV. Conclusion

Whether they represent a majority or a minority, Sunni Muslims and Shi'a Muslims are in the end Muslims. This fact that cannot be ignored and both Iran and Bahrain recognize this fact in their Constitutions, the most important legal instrument of any state. Not only are Iran and Bahrain bound by their constitutions, but also they are bound internationally through legal obligations represented in treaties and declarations. If international law cannot be applied, constitutions can be. They signify state’s sovereignty. It is the responsibility of the state to entrench international obligations in its constitution. Yet, when the state has no intention of doing so, it finds gaps and exceptions for that implementation. Additionally, the Islamic identity of Iran and Bahrain and their obligations to follow Islamic principles should enhance their behavior towards all Muslims regardless of their sects. Moreover, the legal foundation that both states have should enhance their strategies in dealing with their citizens too. However, this is not true in the daily life and in the states’ strategies in Iran and Bahrain. The Iranian and Bahraini governments do not accept the existence of others who are Sunni Muslims in Iran and Shi’a Muslims in Bahrain. The case is dramatic because this difficulty of acceptance has lead to systematic attacks against them regardless of any international or constitutional obligations. It does not make any sense that states draft constitutional provisions in order to breach them resulting in human rights violations towards the targeted group. It is the same for Islamic principles and international instruments. Stating these obligations puts any state in an embarrassing situation in front of its people, international community and their Islamic identity. Compatibility among all these obligations to which states are bound to is advisable for the sake of the state itself and its citizens.