The position of leadership in Iran constitution

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ABSTRACT

Background: Some principles have special eminence in the constitution of Islamic Republic of Iran that shows the importance and special place of these principles. Perhaps we can say that the Guardianship of the Jurist or Providence of the Jurist principle is the most important and the most essential principle among various issues that are discussed in this rule. Because the base of Islam rule and the main origin of Iran Islamic Republic system, that is the sovereignty of Allah and pure Mohammadan (PBUH) Islam, emanate with adherence to the principles of Supreme. In fact it can be said that the divine – humanity theory of jurisconsult (leader) is the governing doctrine of this rule. This research is to discuss the legal and personality position of the Velayat-e-faqih in Islamic Republic's constitution, on one hand, and to explain its legitimacy and credibility, on the other hand.

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To Cite This Article: SayyedTaghi Kabiri, Mozghan Mirnajafi., The position of leadership in Iran constitution. Adv. Environ. Biol., 7(13), 4299-4304, 2013

INRODUCTION

Islam, the basement of the constitution principles:

With an overview of the introduction and different principles of the constitution, it will be clear that: First, the basis of codification of the constitution of Islamic republic of Iran is based on Islamic worldview which is based according to the holy Quran and infallibles’ Sunnah; Secondly, all laws and regulations of the Islamic country must comply with Islamic standards, otherwise they will be considered invalid and illegal. In other words, the jurisprudential Islam is the base for different principles of constitution.

It has been said in the first principle of constitution: “ Iran government is the Islamic Republic that Iran nation took part in the referendum of the tenth and eleventh of April in year 1979, which encounters with the first and second days of Jumad - al-Awwal in year 1399, and the majority of those who had the right of voting, accepted it as their constitution , based on their longstanding belief in the rule of justice and truth of the Qur'an, following their victorious Islamic Revolution led by the supreme authority of Ayatollah Khomeini”. According to the above mentioned principle the political system of Iran is the Islamic Republic, in which the word republic indicates the form of regime and the Islamic represents its content. (Saffar, 36)

In addition, the government approvals must not be inconsistent with the principles of the constitution or the rules of the country's official religion (the 85th principle), second: the "Guardian Council" is formed in order to protect Islam sentences and the constitution. (91st principle) and the jurists of the Guardian Council have been considered as the legal authority for detecting the discrepancies of the rules of Parliament and government approvals with Islamic sentences (96th principle). In addition, Parliament members swore to guard the privacy of Islam and also to observe integrity and piety in advocacy and doing their (Alavian, 180).

In fact, we can say that the words "Islam" and "Islamic basics" and "Islamic rules" are the key words of the Constitution that indicates the importance and value of Islam in this rule.

Islamic government in constitution:

The political system of each country shows the contents of that government and its high position near demos. Scholars have different opinions about government and governance. Some of them are mentioned below:

1. Aristotle says in a position of his book named "Politics": “The government is a collection of the organizations and rulers of the city, and especially those rulers who have full authority in all things. So the government is superior to the state everywhere and, in fact, they are the same. ”(Aristotle, 115) And elsewhere he defined it as: “The organization of government or constitution is the order of dealing with law offices and positions, and positions are divided within the power of the holders of political rights, and sometimes equally between them. (the same, 160)
2. Some authors believe that the word “government” brings three meanings to mind: a) government action and leadership, b) political regime, and c) the institutions that are practically responsible for the government in a state or country, especially those institutions that apply to the executive branch…. [9]

3. Some other contemporaries have written explaining the government as: The word ruling means excellence and supremacy, The ruler is superior and stronger than the other forces of the ruling regime. He has the right to issue orders and prohibitions, and subordinate powers have to obey his orders. [15]

Today ruling is not absolutely accepted in the internal field, but it’s incident to the laws that nations make for the government. The beginning of liberation movements and change in the political systems of Europe, made lawyers to comment on the meaning of sovereignty and to reconsider its meaning and largely abandon their opinion. [7]

But in the divine school, sovereignty has a meaning for humans that is away from domination and coercion, and propels talents toward development and superior virtue and purity. Divine school knows Allah as the main and leading principle and its criteria is moving toward Allah, and every power that blocks the path of humanity towards Allah, is satanic from this point of view. Public affairs and comprehensive conduction carries out by persons who are excellent in terms of science and virtue, provided that it is based in deed. In the Islamic Republic of Iran, the ruling system has been introduced “Islamic Republic” with no provision that its principles are based on faith in Allah and belief in the divine revelation and resurrection. (Introduction of constitution)

Thus, the government regime in Iran after the Islamic Revolution was approved by an overwhelming majority of nation according to the Islamic Republic's constitution, which has been emphasized in whole constitution that indicates the special status of religious government based on Muhammadan Islam. Perhaps it’s for this position that it was emphasized secondly at the last statements of constitution and has been expressed unchangeable.

The "velayat-e-faqih" principle is the basis of Islamic rule according to Constitution:

One of the unique features of the Islamic Revolution of Iran, is the role of religious leadership, guidance of spiritual and leadership in the conquest of the revolution and the establishment of the Islamic Republic, that all internal and international observers and analyzers confirm it. But the one that needs precise and remark, is the position of this subject in the Constitution of the Islamic Republic that has been manifested under the title of "velayat-e-faqih ". Naturally, the political systems of the world have all given the spirituality a position and dignity, but it is mostly symbolic and ceremonial and has reforming and moral aspects.

While the supreme religious leader in Islamic Republic of Iran, has been known as the basis of the Islamic system, and without it, the legitimating of the ruling system and Islamic state of laws and regulations even the three branches of power will be questioned. However, it should be noted that the "Leadership Principles of the Constitution show that the community leadership, as the head of government, is responsible for heavy tasks, regardless of the sublime spiritual and educational dignity that leadership - who’s just accepted by people - has naturally and spontaneously, and in addition to the divine responsibilities – which is the basic guarantee for the performance of his duties - is also responsible for the elected Assembly of Experts. Intellectual and doctrinal origins of constitution require that supervision and leadership of a just worthy and competent jurisconsult – elected by experts – to be at the head of government and all affairs need to be managed with his validation and counsel until the "Islamic Republic" (the Islamic system based on the will of all people) identified. [4]

It has come on the part of the one hundred and seventh principle, "the elected leader of Experts, will take the responsibility of guardianship and all other responsibilities arising out of it." The introduction of constitution also states: “Under the Guardianship of jurisconsult and sustained leadership, constitution predisposes the realization of the qualified velayat-e-faqih, who is recognized as a leader by people, to ensure the lack of deviation of different organizations in their principle functions”.

As you can see in these phrases, first, the Velayat-e-faqih is placed in line with Imams’ Imamate (AS) (Imamate continued), second: its responsibility is put upon a qualified Fagih, thirdly: the masses should recognize him as a community leader, and fourthly: The leader ensures the lack of deviation in different organizations and the whole system from their principle duties [11]

Leadership and the three branches of power:

According to the Iranian constitution, the three branches rule the society that undertakes legislative matters, codified law enforcement and judicial issues. Each of the three branches of government (legislative, executive and judicial) undertake their assigned responsibilities independently of each other.

Despite the fact that three branches are independent and don’t interfere in each other's affairs, all three do their duties under the velayat-e-faqih on the basis of the principles outlined in the rule. The 57th principle of constitution states: "The ruling powers of government of the Islamic Republic of Iran include the legislative, executive and judicial that all affairs are applied under the velayat-e-faqih ship and community leadership based on the following principles of constitution. These powers are independent from each other."
The 57th principle is the only one in which the absolutism of the leadership of supreme has been stated openly, that refers to its scope, comprehensiveness, and importance. This means that, in addition to the fact that three branches should do their affairs under the velayat-e-faqih’s control and supervision, their legitimacy comes after his validation and verification.

The most important, the most extensive and most sensitive of the three branches is the executive branch. Because, on one hand, it has a vast executive network to the lowest levels of society, including government cabinet and public employees (staff). On the other hand, it has the responsibility for enforcing laws and regulations. For this reason, the introduction of the constitution has mentioned it as "executive" referring to its importance and position: "The executive branch should be the key to create Islamic society, because of its special importance in connection with the enforcement of laws and regulations in order to achieve square relationships governing the society, and further the necessity that this critical issue has in achieving the ultimate goal of life. As a result, enclosing in any kind of cumbersome and complex system that rebates or impairs the achievement of this goal, will be negative from Islamic point of view. Therefore, the bureaucracy that is the result of tyranny ruling, will be strongly rejected, till an administrational system with greater efficiency and high speed in performing administrative obligations arises. (Introduction of constitution)

The legislative organ of the Islamic Republic, the legislature, has a particular importance, because the responsibility of the original legislation of main rules of the country has been put in charge of this branch. One of the most important responsibilities of the legislature, is the legislation of rules required in country accordance with Islam and the constitution which is the responsibility of Parliament. "Parliament cannot deduct laws that conflict with the principles and provisions of the official religion of the country or constitution." (Principle 72) "In all cases Parliament can legislate at the limits laid down in the constitution." (principle 72)

The proposed bills of state also need to be passed in Parliament (principle 74) that shows the special legislative position of legislature.

The Judiciary and judicial issue has also special importance and sensitivity, because of its direct relationship with the people’s rights. In the Islamic governmental system, the judiciary is one of the three pillars of government that is at the scope of the duties and authorities of the Islamic ruler, which is monitored by the velayat-e-faqih at the absence era. In other words, as the Velayat-e-faqih has the responsibility of public superintendence and Fetva, has also the responsibility of judicial officers and hostility term. Today, we need a complicated judicial system due to the wide range of legal and judicial issues which is able to attend and deal with the legal problems and issues with justice. The constitution of the Islamic Republic has paid a special attention to the judiciary due to this importance and sensitivity. The 157th principle of the constitution says: “The leader determines a just and wise priest who is headmaster, contriver and familiar with judicial affairs for five years as the head of the judiciary, in order to carry out all judicial responsibilities in all judicial and administrative affairs that is the supreme authority of the judiciary.”

Leadership and Broadcasting:

Today, one of the most important tools for broadcasting and publishing different cultures is mass communication and media. Among the media, broadcasting (Radio and TV) will play a vital role. Some experts believe that the soft war is unique in the media war, and major powers of the world in the 20th century use the media as a crucial and necessary tool even in the military to win the war. The media has been considered as an important and critical tool in Islamic Republic of Iran, and a great amount of special attention has been put for it in the constitution. We read in Constitution's introduction as the title of "media": "Mass media (radio - TV) ought to be in the evolutionary process of Islamic republic and should be served to broadcast Islamic culture, and hereon, make benefit of healthy encounter different viewpoints and it should seriously avoid the promotion of destructive and non – Islamic features. The compliance of the principles of such a rule and constitution that introduces the freedom and dignity of human beings as the signboard its goals, and opens the way to human growth and development, is the responsibility of everyone, And Muslim nation should participate in the building of the Islamic society through selecting believer authorities of the convoy and having ongoing monitoring on them, In the hope that Muslims could be successful to build the certificate Islamic society that is a template and sample society for all people in the world. Due to the status and role of broadcasting in various political, cultural, social and economic issues, its supervision council has been also considered in Institution, Where the constitution has put the oversight of this organization for the representatives of the three branches of authority. Also, besides monitoring of the three branches of authority, the responsibility and presidency of this organization is under the direct supervision of the leader of Islamic society. According to constitution, the appointing and dismissing of the IRIB is the responsibility of the velayat-e-faqih . This shows the special place of leadership in the national media. “The freedom of expression and dissemination of ideas should be provided In the Islamic Republic of Iran Broadcasting (IRIB), in conformity with Islamic criteria and country interests. The appointing and dismissing of the Islamic Republic of Iran Broadcasting IRIB is the responsibility of velayat-e-faqih and a council consisting of representatives of the judiciary and the president and parliament.
The principle of the constitution: The decisions of the Council (the constitution Reload Council) The Velayat-e-faqih being approved by this council, and finally it should be put to a referendum. It has been stated at the last society. The philosophy of Velayat-e-faqih of Islamic revolution is not an exception from this rule, because with endorsement must go through the approval of an absolute majority of participants to popular vote in a referendum, after having been confirmed and signed by the Velayat-e-faqih. "(The 177th principle of constitution)

Leadership and armed forces:
One of the explicit recommendations of the holy Qur'an to Muslims is the comprehensive preparation for defense against invasions of enemies and dissidents, obviously this is not recommended for unilateral war and murder, because Islam is the religion of peace, mercy and compassion, rather it is to defend the honor of Islam and the basics of Islamic government, Because there are enemies, tyrants and oppressors at any period of time who don’t have tolerance for justice and humanity, and their arrogant characteristic makes them to seek the oppression and violation toward Muslims.

That is why the constitution of the Islamic Republic of Iran has given a great deal of attention to armed and defensive forces. First, the purpose of the defense forces has been mentioned at the preamble of the legislation, and then has been proposed as a necessity in order to expand the rule of law and justice. "In the formation and equipping defensive forces of nation the interest is that faith and school are the basis and regulation. Therefore, the Army of the Islamic Republic and the Iranian Revolutionary Guards are in compliance with the above mentioned objective, and not only are responsible to protect borders, but also are responsible for the ideological mission of jihad in Allah's way and fight to spread the rule of Allah’s law in the world. " (And to fight the enemy prepare Against them to the utmost, such as Armed forces and strong horses and Provisions for fighting, in order To frighten the enemy of Allah as Well as your own enemy and others Besides them, whom you do not know Them but Allah knows them) (Introduction of constitution)

The 140th to 151st principles of the constitution is in relation with nation's military forces, especially the army and the Iranian Islamic Revolutionary Guards that determines the duties, jurisdiction, authority and responsibilities of the armed forces. And what is important, is the position of the velayat-e-faqih in military forces. In this regard, perhaps a glimpse to the responsibility of velayat-e-faqih in the appointments and dismissals, can clarify this position. According to the constitution, the appointments and dismissals and acceptance of the resignation of Joint Chiefs Chairman, Commander of Islamic Revolution of Iranian Revolutionary Guards, the military senior commanders is the responsibility of leadership. (the 110th principle of constitution)

Leadership and Expediency Council:
One of the problems prior to the revision of the constitution of the Islamic about the decisions of Parliament, was a dispute between Parliament and the Guardian Council. Because sometimes the ratified bills that were sent to the Guardian Council from Parliament, were known to be contrary to Islamic rules or contrary to the constitution, and yet Parliament insisted on its decision and thus, the subject was remained with no result. At the time of Imam Khomeini’s era, they referendum Imam Khomeini due to the existing legal gap in such cases. In 1987, he clarified the duty through a letter and established "Expediency Council" that was added, in the Reload of constitution, as one of the principles of this legislation. One of the best examples of leadership consulting with Expediency Council is the subject of reload of constitution. This shows the importance of the formation of this Council, and also shows the worthwhile position of velayat-e-faqih in the major legislative of the country. Namely, even when the constitution of the country requires amendment or complement, this will be among the authorities of the supreme authority. Chapter 14 of the 177th principle of the constitution that is named as "the revision of the constitution" states: "The reload of the constitution of the Islamic Republic of Iran must be conducted as follows: The velayat-e-faqih, after consultation with Expediency Council, proposes the cases of amendment or complement of constitution through an order – which is addressed to the president - to the Constitution Reload committee with the following composition: 1 - members of the Guardian Council 2 - the heads of the three branches of authority 3 - Permanent members of Expediency Council 4 - Five members of the of Leadership Experts 5 - Ten people selected by the Leader 6 - three of Cabinet 7 - three of the Judiciary 8 - ten of the parliament 9 - three of the academics .... "

It has been stipulated at the end of this principle that the Reload must signed by The Velayat-e-faqih, after being approved by this council, and finally it should be put to a referendum. It has been stated at the last principle of the constitution: The decisions of the Council [the constitution Reload Council] The Velayat-e-faqih endorsement must go through the approval of an absolute majority of participants to popular vote in a referendum, after having been confirmed and signed by the Velayat-e-faqih. “(The 177th principle of constitution)

One of the most important ranks of Islamic ruler, in Islamic government, is to monitor all different areas of society. The philosophy of Velayat-e-faqih of Islamic revolution is not an exception from this rule, because with
careful and smart monitoring on the government and governmental institutions, the system will be in the direction of its genuine Islamic duties, and will guarantee the welfare of the public.

It is natural that the supervision of Islamic governor and leadership in different areas of ruling is informative and approval and different principles of constitution about leadership tasks and responsibilities represents this subject.

So, from the point of view of Islam, monitoring in general, and supervision of government in particular, has a Qur'anic origin. The background of monitoring in general rights, can be found in the beginning governments of Islam (prophetic and Aliwite government). In the West, monitoring actions the government is almost twin with the formation of political systems based on principle of separation of powers. The domain of public law is very prominent and extended; the legitimacy of the political system, actions of government and actions of government institutions are under the supervision field of public law. The supervisory role of leader on the actions of ruling powers and other government institutions appear to be very widespread, according to the position of leadership in Islamic Republic of Iran. Constitution figures instances of leadership supervision on three branches of power and other government institutions. But the description of guardianship as absolute and the principle of "proportionality the sentence and the issue" requires that leadership Supervision, should never be limited to the specified ways in the constitution, but it rather requires extensive nationwide organizations to control all the actions of government by faithful and effective experts.[5]

The principle of velayat-e-faqih has been placed in Islamic republic as way to achieve this Supervision. And essentially, one of the most important objectives of Velayat-e-faqih in the Islamic system is to guarantee non-diversion of the organization. It is stated in constitution preamble under the title of “velayat-e-faqih” principle: “Under the Guardianship of jurists and sustained leadership, constitution predisposes the people and public tendency toward him as a reason for adoption of government and people caliphate, and says: “If there wasn’t that great community and there wasn’t an ultimatum and closure of way for me, and if there wasn’t the covenant of Allah from scientists not to be silent against over-eating of oppressor and the hunger of oppressed, surely I would put the halter of caliphate on its shoulder and withdraw away like the first day.” (Nahj – ol – Balaghah, the 3rd sermon)

In political system of Islam, people have a great position. “Without the presence and acceptance of people, the canonization law of Allah is not implemented. People make up the main element in every government. The authority of the government depends on popular support. According to Islam, Islamic ruling is a servant of people, and has no difference with other people in adherence to the law”.

The role of people in different political regimes (monarchy, democracy and theocracy) is different. Each political system has a particular attitude towards people proportional to its nature and its goals that checking all of them needs more work. However, to determine the position of people in religious system, it is necessary to mention two examples of the old and new systems, each of which reflects the conditions and requirements of its time. Kingdom systems are the pattern and symbol of traditional systems, and democratic governance represents the new political values. Thus, checking out the position of people in these two systems can reflect the role of people in different political systems. In fact, in the developed systems, the most advanced form of governance is the government of people to the people. It means that people decide through Parliament and representatives, and then communicate it to the Executive Branch to be implemented because there is no center for decision-making above people in this mindset."

"Democracy is an old political phrase that is made up of the combination of two Greek words “demos” which means people and “kratia” that means government and its literal meaning is people’s rule. Although the term democracy has found many uses and its application in general is going to be in a daily basis, yet it does not have a clear definition and while having charm and simplicity, it has a great uncertainty. " [14]

In the Islamic Republic of Iran, the subject of Allah's sovereignty and the role of people in this sovereignty, have been considered: "Absolute sovereignty over the world and man belongs to Allah and he has made the human the governor of his social destiny. No one can devest human of this divine right or out it in the interests of a particular individual or group and the nation apply this right from a way that comes in next principles. (The 56th principle of constitution)

This principle emphasizes the popular sovereignty, but if it is to consider other principles of the constitution, we reach the same assumption of a compromise between the two approaches. Absolute sovereignty belongs to Allah. Though Allah does not directly intervene in the exercise of sovereignty, but he has sent
legislation that its interpretation is the responsibility of the jurists. And the Guardian Council that has been composed of jurists is responsible for monitoring the conformation of the law enacted by the people's representatives with Sharia law.

So the position of people in the system based on “velayat-e-faqih” is the main motion and the most important component of velayat-e-faqih power, is millions of mass that are trustee to him in the direction of the current of divine supervision in the social arena of community. And it was for this reason that Imam Khomeini as the architect of the Islamic Republic, has always knew people the real benefactors of the republic.

Results:
1. In the Islamic Republic of Iran, the ruling system has been introduced “Islamic Republic” with no provision that its principles are based on faith in Allah and belief in the divine revelation and resurrection.
2. the government regime in Iran after the Islamic Revolution was approved by an overwhelming majority of nation according to the Islamic Republic's constitution, which has been emphasized in whole constitution that indicates the special status of religious government based on Muhammadan Islam.
3. While the supreme religious leader in Islamic Republic of Iran, has been known as the basis of the Islamic system, and without it, the legitimating of the ruling system and Islamic state of laws and regulations even the three branches of power will be questioned.
4. In political system of Islam, people have a great position. “Without the presence and acceptance of people, the canonization law of Allah is not implemented. In the rule based on the velayat-e-faqih, as an Islamic government, people choose Islamic system with knowledge and love and want the divine law enforcement. And essentially, Islamic government has no reinforcement possibility without the people selection and support.

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