



Feasibility of Democratic Guarantees in the Principles of the Iranian Constitution

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Abstract

In today's era, there are few governments willing to consider their sovereignty based on domination and force, or hereditary rule and not claiming legitimacy due to the acceptance and support of the people. Although many governments maintain the appearance of democracy (show elections, puppet parties) have an absolute and authoritarian nature. Therefore, observing the principles and determining the principles in the constitution along with the guarantee of implementation is a necessary and sufficient condition for the establishment of democracy in any country. Which provisions of the constitution have satisfied the establishment of democracy in the constitution of Iran? This is the question of this article. The dual control and restraint of power (separation of powers on one hand and the creation of a supervisory body to supervise them on the other) is to control power (check & balance system) and prevent the body of power from violating legal limits and attacking democracy. The following items are among the important means of guaranteeing democracy in Iran's constitution. judicial supervision (prosecution of crimes caused by abuse of power and civil responsibility); political surveillance (investigation, questioning, impeachment); Hierarchical supervision and public supervision (parties, publications, commanding good and forbidding evil, principle 8).

Key words: Democracy, Separation and Balance of Powers, Fundamental Rights, Legitimacy

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Introduction

Although it is possible, the origin of the political power of the rulers arises through democratic methods. But the sweet taste of power and its rebellious horse is a strong temptation for those in power to transform temporary power into permanent and absolute power. In the absence or weakness of the guarantee of implementation necessary to guarantee democracy, the principles and legal goals of democracy become useless and become a showcase for the government to show legitimacy. In this case, rule by law is replaced by rule of law to make tyranny and totalitarianism appear legitimate under legal cover.

Until now, the established governments have ruled over all parts of the world in two ways, absolute and constitutional, in different eras. Apparently, it should be accepted that the life of absolute governments has expired, and has joined history. And constitutional governments, relying on the votes of the people's presidents, are the only actors of this era.

Few established absolute governments (such as North Korea) although the fact is undeniable. However, due to the international disgust, and the lack of legitimacy, responsibility and bad name for the rulers, it is difficult to express and exercise absolute sovereignty.

These governments, in order to maintain appearances, put the principles of democracy in the constitution and put it to a referendum by voting on the constitution. It seems that the Constitution of the People's Republic of Korea with 130 principles and a 6 main amendment has the most progressive principles of democracy and individual, social, economic and political freedoms.

Therefore, the existence of progressive principles and goals in the constitution of any country does not necessarily lead to the establishment of democracy. Because the missing link of this process is the mechanism of guaranteeing these principles and goals to guarantee their implementation.

Political and legal paths, as effective factors of executive guarantee, provide the necessary condition to guarantee the establishment of democracy. But, a good law, with a good executive, provides the goals of the legislator. Therefore, its organizational and executive mechanism inevitably depends on the rule of law and separation of powers (principles of democracy).

In Iran's constitutional law, assuming the existence of principles and progressive goals of democracy, the guarantee of effective implementation in the establishment of democracy is the main challenge ahead. Otherwise, the supreme principles and goals of democracy in the constitution will not be the source of value creation.

In this research, we are looking for an answer to this question, what are the guarantees of implementation to guarantee democracy in the Constitution of the Islamic Republic of Iran?

Theoretical foundations of research

- A- Absolutist government: Thomas Hobbes was looking for the emergence of a government, with all imaginable powers to perform the task of providing security against the aggression of foreigners who intended to invade the desired land. In this

government, all authority and powers were concentrated in the hands of one person as the ruler, there was no accountability or supervision.

- B- Separation and balance of powers: John Locke presented the theory of separation of powers in two executive and legislative branches to distribute and monitor power; Subsequently, Charles de Montesquieu developed this theory in a comprehensive and modern form in the book "The Spirit of the Laws" (separation of powers into three branches of the executive, legislature, and judiciary), which have the ability to control, monitor, and separate and divide powers from each other.
- C- A: Democracy, the participation of the people in the administration of the affairs of the country is called democracy. Democracy is a way of low-error management and organization of society and right-oriented people, which does not rule on the axis of a particular individual or group. The word "democracy" is derived from the Greek language and in the Swedish language it roughly means "rule by the people". Political power in democracies is in the hands of the people. Dictatorship is the opposite of democracy. In a dictatorship, a single party or a single person makes decisions.
- D- Ensuring democracy - achieving democracy in different ways is not an irreversible path to tyranny. The rulers who gain power in a democratic way cannot be guaranteed to overcome their selfishness and desire for tyranny. The sweetness of power can lead to betraying the trust of the rulers with the intention of seizing power and using legal means to suppress

critics and establish tyranny. Therefore, elections alone cannot be a symbol of democracy; Rather, the rule of law, alternation of power, limitation of authority, responsibility and accountability of rulers, freedom of speech of parties, press to inform and exercise supervision of the right holders (people) and equality before the law should be provided in the constitution.

Research Methods

In this article, we will seek to find valid reasons by analyzing the descriptive and analytical method and by examining the texts of the principles of the constitution. Legal, judicial and political tools, along with the necessary standards, in the democratic systems of the world, have been able to provide relative satisfaction in this field.

Academic principles of guaranteeing democracy

A: Limitation and frequency of power: One of the important parameters of people's governance is to regain representation (power) and its peaceful transfer. In order to achieve this goal, representation periods should be defined and limited first so that more outstanding talents can be used

Life-long post pests will not have any fruit except causing damages. Full talent and ability are never concentrated in one person or group and is scattered among people, so every ruler and power holder, even powerful and free from political lusts, applies all his positive ideas within a few years. But life and changes have found an unbelievable speed that

requires new ideas and new needs, here the creator of the existing situation resists this need and is not willing to let the machine that is the result of his efforts fail. Periodicity of power causes the dynamism of governance and results in legitimacy and stability. (creating security, satisfaction and efficiency in the country)

Therefore, competent governance with the use of capable statesmen with ideas depends on the limitation of their presence in the power period. Because:

- Every ruler's effort to reform matters relies on innovations resulting from his own taste and beliefs. After applying the desired changes, it will try to save its creations. And basically, it will prevent further changes.
- People's elected officials (trustees of political power) are not free from the lust for power and material interests; it is conceivable to use rule by law or force to stabilize and perpetuate power.
- Continuity of power and lack of need for people's approval and election causes dissociation, inattention and lack of accountability to the people, and induces false self-confidence and a position higher than human in the ruler.

Choosing the ruler and delegating authority for representation is the least important part of it. Therefore, one of the functions of democracy is manifested in the peaceful transfer of power to the successor. (It is important to remove the ruler, not to choose him)

The possibility of alternation of power in its place is considered a sign of the growth and development of democracy and provides the ground for the acceptance of all intellectual

values and political balance. In this way, alternation of power should be considered a companion and companion of democracy and sustainable social vitality. (Hashmi, 2016: p. 219)

B: Balance of power and separation of powers: The concentration of the three legislative, executive and judicial powers (absolute government) in one place, in the case of complete goodwill, causes the defects of this process to remain hidden. (The simplest example: one person in the position of plaintiff, judge and executive officer loses the element of neutrality) if the separation of powers causes the rule of 3 types of separate, different, different and non-aligned thinking and views.

Addicted to power, corrupt and inclined to absolute power, will gradually close the field of freedom for the people and will seek to deprive the people of other rights.

Therefore, in the Age of Enlightenment, first John Locke proposed the idea of separation of powers into two powers (legislative and executive), and by Montesquieu into three powers, for the purpose of controlling and limiting power, by power.

The elements of government power and people's freedom, even in a democratic society, are in practice unbalanced and the dominance of power narrows the field of freedom. Montesquieu believes that in order to avoid centralized authoritarianism and tyranny by separating the content and organization of affairs, it is possible to establish a kind of balance between the ruling powers (legislative, executive and judicial). (Hashmi, 2016: p. 220)

According to Charles de Montesquieu, in order not to abuse power, power must be stopped by means of arranging tools, and the

requirement for this is to cut power into pieces or separate power. (Abbasi, 2013: p. 88)

The government in democratic systems is divided into three branches: the executive branch (which is sometimes also called the government) and is responsible for formulating and implementing policies; and the legislature, which is also called the parliament, the national assembly, or the house of representatives, and is responsible for approving laws and taxation methods, as well as monitoring the performance of the government; and the judiciary (or courts), whose responsibility is to ensure compliance with the law and, if a violation is observed, to convict the wrongdoers. Separating these three powers from each other is to maintain different types of accountabilitys. If the performance of the judiciary is not independent from the legislature and the executive, it will not be able to guarantee the performance of government officials in the field of law, regardless of considerations and relationships. In the same way, if the parliament does not have the independent power to approve laws and closely monitor the functioning of the executive branch, the political and financial accountability of the government in front of the voters will be greatly faded. (Bettenham and Boyle, 1997: p. 92)

C: Rule of Law: rule of law is against the use of instrumental law (rule by law). In autocratic and absolutist governments, the rule of law was based on the will and whim of the ruler and basically has no other framework or rule. And the ruler is not obliged to obey the law.

According to this principle, all social affairs in the society must be in accordance with the law. The rule of law balances two major concerns: on the one hand, the powers granted to

the government should be in a way that allows the government structures and authorities to run the country; And on the other hand, it is necessary to prevent the spread of government power and the limitation of the basic freedoms of citizens with authoritarian practices. The rule of law provides the balance and balance of these two needs of a healthy and orderly society. The main functions of the rule of law are to control political power: to regulate the administration of public affairs, to guarantee the rights and freedoms of citizens; Undoubtedly, if the political system is formed based on the law and applied based on the law, the possibility of autocracy and the emergence of authoritarian and dictatorial governments will decrease. (Khosravi, 2009: p. 32)

The rule of law means that all government officials, from elected to appointed, act on the basis of the power that the law has determined and are obliged to comply with the law and regulations, especially the upper laws in their performance. The root of this principle is based on Aristotle's opinion that the best government is a government in which the rule of law is not the rule of individuals.

Therefore, a law should be obeyed if it has inherent and transverse characteristics and does not conflict with the constitution, fundamental rights and international treaties. A brief explanation about inherent features:

1- Intrinsic features: those distinctive features and basic elements without which no law can be formed.

A: The binding nature of the law. B: The generality and comprehensiveness of the laws, which is somehow related to the principle of equality of people before the law and the principle of non-discrimination. C: Publicity,

openness and clarity of the law in such a way that it is not ambiguous or complicated. D: referring to the non-retroactivity of the law and its future-oriented nature according to the rule of the ugly eagle without expression. E: The ability to implement and apply the law in such a way that it does not become a duty and can obey the approved law (the ability to enforce the law in society).

2- transverse features: Transverse features are among the features that if a rule lacks them, however, it may still be called a rule. According to Plato's interpretation, the law should have the ability to persuade and persuade the citizens and should be based on the customs and norms of the people of the society and should not be imposed, otherwise no one will follow it in practice. The most important features that make a law persuasive are:

A: To reflect the opinion of the majority. B: Responding to the needs of society and providing public benefits. C: It should be consistent with ethics and justice. D: It should be continuous and stable because permanent changes are in conflict with the principle of enforceability of laws. (Raskh, 2006: No. 5)

Article 9 of the Constitution does not make every law worthy of obedience.

D: The principle of incompetence: Jurisdiction is one of the important issues in public law; However, the principle is that authorities and institutions do not have the competence in the public domain. The principle of competence is closely related to the rule of law, and since the principle is based on lack of competence, only cases of competence recognized by the law for an official or institution will be accepted. (Qutabi, 2015: p. 3) One of the important guarantees of democracy is to

neutralize, abuse and expand the powers of the rulers. that this principle creates the potential of its implementation for constitutional courts.

If this principle is observed, the way of extra-legal interventions in all fields (medicine, election of mayor, minister, etc.) will be blocked.

E: The responsibility of the rulers: The principle of responsibility is one of the certain political and legal principles of the governments that arise from the will of the people, which is based on the rule of law.

The responsibility of rulers in the Constitution of the Islamic Republic of Iran is of 3 types:

1: Legal responsibility

A: Civil can be charged in case of damage to people

B: Criminal liability. When they commit a crime while performing their duties, they will be prosecuted.

2: Political responsibility

A: Gaining popularity or unacceptability among the people for obtaining votes and elections

B: Responsibility in front of legal supervisors such as: (Assembly of Experts-Leader), (Leader-President) (Assembly-President or Ministers) (President-Ministers)

Political responsibility comes from the lack of agreement and understanding on political actions between executives and observers or voters.

Imam Ali has accepted criticism and supervision of power. Ibn Atham writes: "An

Egyptian man said to him: O Abul Hasan! We pledge allegiance to you on the condition that if you act like Uthman among us, we will kill you. Ali replied: Yes" (Ibn Atham Kufi, 1995: p. 246-247)

Is the ruler responsible to anyone other than God? The discussion is reserved for the ruler of the entire Islamic society, and otherwise there is no doubt that the government officials - who have some of the powers of the leaders of the Islamic society - are responsible to the ruler of the entire society. Following this discussion, we will state the cases of the ruler's responsibility that he did not have a duty to deal with.

Ruler, responsible before God and people

Contrary to the duty that is placed on the ruler only in the area of religion, in terms of responsibility, he must be accountable to the people. People have the right to ask questions and ask for explanations. At the beginning of Malik Ashtar's Testament, Imam Ali warns him that people look at his government and discuss and criticize it; As he looks at the previous governments and expresses his opinion and probably criticizes them. Then, Imam Ali introduces the statements that flow from the tongues of God's righteous servants as the evaluation criteria of the government: It is only inferred about the righteous by what God does to the age of His servants (Nahj al-Balaghah: Name 53)

Imam's speech indicates that people have the right to express their opinions about the government and their opinions are a criterion for knowing whether the government is good or bad.

The responsibility of the ruler against the work of agents

In this case, although the installation of the subordinates is done by the ruler, the action and work that they have to do is their duty and not related to the ruler. However, he is responsible for his actions and will be held accountable. While warning Malik Ashtar about the selection of his secretaries and employees and advising him to be obsessive in this matter, Imam Ali warns that he should choose strong and capable people for his work. And if a fault is found in them and they commit a mistake, the ruler will be responsible for their work, even if he is unaware of their work: And no matter what was wrong with your book and you neglected it, you will hold it accountable.

The responsibility of the ruler when the agents are incapacitated

It is a place where government officials are unable to do anything. In this case, he must directly implement it and is responsible for it. Hazrat Ali (peace be upon him) tells Malik Ashtar that he has the duty to personally follow up on these cases. (Rostamian 2000, No. 18)

The principles guaranteeing democracy in the constitution of the Islamic Republic of Iran

A: The principle of limitation and alternation of power. B: Balance of power and separation of powers. C: The rule of law D: The principle of incompetence. E: The principle of legal and political responsibility of rulers.

A: The principles that include the limitation and alternation of power in the constitution:

It seems that it is necessary to apply the principle of limitation and alternation in power for elected political officials and representatives of expert councils, Islamic Council and City Council. It does not include (policy makers) and technical and judicial people. One of the results of power alternation is the need to obtain the consent of the voters in different periods through the ballot box; Because he forces the people in power to always take steps to satisfy the voters and national interests, there will be no place for him in the next elections.

The limitation and alternation of the authorities' power is based on the Constitution of the Islamic Republic of Iran as follows.

1: The leadership position (principles 107 and 111) is chosen by the elected people in the Assembly of Experts (principle 106). A specific period for the responsibility of the leadership has not been determined, and it seems that according to the meaning of Article 111 of the Constitution, the Assembly of Experts cannot determine it for Andorra, although the capacity of the leadership to resign voluntarily is not ruled out. The recent issue of Pope Benedict XVI is unprecedented.

2: Members of the Council of Leadership Experts (principle 106) to monitor leadership conditions, and if necessary, dismiss and install leadership positions.

3: The presidency is a 4-year term with the possibility of consecutive re-election for only one term (principle 114).

4: Members of the Islamic Council are elected for a 4-year term. (Principle 63). Their re-election is unimpeded, and if elections are not possible due to war or military occupation, the 4-year term will be suspended for a certain period with a two-thirds majority vote. (Principle 68)

5: Legal members of the People's Elected Expediency Council. (heads of the executive and legislative branches)

6: The members of the city council are elected for a period of 4 years by direct vote of the people (principle 100) and accordingly the mayor is elected by the city council.

7: Ministers are elected by the president for a period of 4 years and nominated to the parliament for a vote of confidence. (Principle 133) which, of course, can be dismissed during this period.

The President of the United States can remain in power for two terms (maximum 10 years and minimum 6 years).

Alternation in power cannot be summed up by rotating the presence of a person in different positions, the President of the United States and the Prime Minister of the United Kingdom are not employed in any other government institution after the completion of their mandate.

One of the goals of alternation in power is the circulation of elites and the presence of people's elected officials (with or without mediation) and the need to be accountable to satisfy them. In family governments, they still don't give up the government treasury by issuing similar orders to the advisor and so on.

The principles related to alternation of power in the constitution are not sufficient and

effective. And the proof of that is the presence of many people not as an exception but as a rule during the past 43 years.

B: The principle of power balance and separation of powers

Separation of powers in the real sense is organizational separation and separation of powers and duties. With the authority of supervision, without the intervention of any power, it affects the other power and balance is achieved. (They do not have the power to eliminate each other) Separation of powers comes to the fore if there is no institution or person who dominates all three powers and can prefer one over the other. There is absolute separation of powers in the US presidential system.

The principle of separation of powers leads to the balance of powers, if the legislative power is formed by the unconditional choice of the people and can perform the duties of representation (legislation and supervision) without being influenced by other powers or special institutions. In this way, the representatives have judicial immunity in the representative capacity and in the personal cases of the representative, except for the commission of obvious crimes or in the case of definite conviction, only with the permission of the parliament of which the representative is a member, he can be prosecuted. (Adapted from Article 26 of the French Constitution)

By approving judicial laws, this legislature limits the power and authority of the judicial system without having the right to directly intervene.

The influence of the legislature on the executive is declaration of war, ordinary law and budget law, delegation of ordinance, impeachment and vote of no confidence in the government. (Principles 35, 38, 39 and 49 of the French Constitution)

The effects of the executive branch on the judiciary are similar to the presidency of the Supreme Judicial Council with the president. According to the law, the Minister of Justice has the position of legal assistant. The election of the Supreme Judicial Council consisting of 9 members by the President, etc.

In the same way, the constitution has organized the supervisory powers for the executive branch over the legislature, as well as the judicial branch's supervision over the other two branches, which results in monitoring and controlling each other and the balance of power.

Principles of Separation of Powers of the Constitution of the Islamic Republic

Article 57 of the Constitution has determined three independent powers under the supervision of the higher institution of absolute guardianship and imamate. And there is no supervision on the other side of the powers on the institution of leadership, because leadership is not within the power, but above it. Although Article 60 of the Constitution defines leadership as part of the executive branch. In the Islamic Republic of Iran, there is no institution more important and fundamental than the position of leadership and the absolute authority of the jurist; Because according to the constitution and Imam Khomeini's view, none of the powers and authorities in the Islamic

Republic of Iran have such dignity. Leadership in the system of the Islamic Republic of Iran is not just a legal foundation created by the constitution, but in the Sharia and Shiite schools, it is considered as the vicegerent of the imam in the age of occultation. (Darvishi, 2021: p. 189)

- The judiciary has the possibility to monitor and deal with the ministers (Article 142) and also to try the president (Article 110 Clause 10 of the Constitution) and to supervise the government by the General Inspection Organization (Article 174). The Administrative Court of Justice (Article 173) supervises employment complaints against the government through the handling of complaints about the decisions and actions of government units, regulations, opinions and definitive decisions of administrative authorities.

Trial of representatives using the opposite concept of Article 86 in personal crimes and the limitation of immunity in statements in the capacity of representative (interpretive theory of the Guardian Council); The eighty-sixth article of the constitution expresses the representative's freedom in relation to voting and expressing opinions in order to fulfill the duties of the representative in the parliament; And committing criminal acts and titles is outside the scope of this principle, and this freedom does not negate the responsibility of the perpetrator of the crime. that the performance guarantee is not effective. (The shifting of the budget lines every year, without submitting the budget amendment to the parliament, is proof of this claim.)

Unfortunately, the court does not have the duty to supervise the way of spending the budget in a qualitative way (economic

spending) and to realize the income and to check the path of the income to the deposit to the treasury of the country.

The Majlis (through the Speaker of the Majlis) supervises the issuance of regulations and the approval of the Cabinet of Ministers on the government (Article 138).

- The executive power in the position of influence on the judicial power and the balance of power:

- Monitoring based on the explicit text of Article 113 of the Constitution with the Guardian Interpretive Theory Council No. 47142/30/91, this principle has been revoked. According to the former interpretative theory, the presidency was obliged and entitled to supervise other powers. What is used from Article 113 and 121 in relation to the numerous and frequent principles of the Constitution is that the President is the guardian of the official religion of the country and the system of the Islamic Republic; And he is responsible for implementing the constitution and regulating the relations between the three powers and the head of the executive branch, except for matters that are directly related to the leadership. In relation to these duties and responsibilities, he can request official explanations from the executive, judicial and military officials, and the aforementioned officials are obliged to provide the necessary explanations to the presidency. It is obvious that the president is obliged to take the necessary measures if he finds a current that is against the official religion of the country and the system of the Islamic Republic and the constitution. (Interpretive Theory No. 4214 dated 20/01/1981)

- Monitoring through budget determination and accountability.

- Approving and sending judicial bills to the parliament. Due to the technical nature of judicial bills, the government board cannot enter into them.

In the supervision and balance of powers related to the legislature: determining the budget in the budget bill (principle 52) sending bills; (Article 74) Regulation of bills; Contrary to Article 52, the budget of the Islamic Council does not pass through the parliament.

There is no separation of powers in the Islamic Republic in such a way that the heads of each power can defend their right to the end.

The legislature must be exclusive to the law, while the leadership, the council of experts, the Supreme Cultural Council, the heads of the three branches, etc., also act directly on legislation.

It seems that the leadership body is a part of the executive branch according to Article 60 of the Constitution, and part of the duties and powers of the leadership in Article 110 of the Constitution can also be applied to the head of the executive branch of America and France.

The principle of the rule of law:

The actions and behavior of rulers and their administrative organizations should be based on the standards of the law. Managing the affairs of the country is not based on selfishness and personal tastes. Based on this, the behavior and actions of leaders are predictable for subordinates, which also makes public officials accountable.

The rule of law means that all government officials, from elected to appointed, act based on

the powers that the law has determined and are obliged to comply with the law and regulations, especially the upper laws in their performance. The root of this principle is based on Aristotle's opinion that the best government is a government in which the rule of law is not the rule of individuals.

A law is worthy of compliance if it has inherent and transverse features and does not conflict with the constitution, fundamental rights and international treaties. (Transverse inherent characteristics)

The principles of the constitution determine the structure and legal powers of the government. But some principles have a strong executive guarantee, such as arresting and explaining the charges only according to the law (principle 32), the violator of this principle will be punished according to the law. Article 38, the absolute prohibition of torture - Article 39, the prohibition of insulting the dignity of persons detained according to the law.

Also, Article 94 - After the legal deadline has passed and the Guardian Council has not investigated, the resolution of the parliament becomes a law.

Principles such as Article 168, for dealing with political and press crimes in the presence of a jury, do not provide an executive guarantee, such as the invalidity of the verdict issued. Article 176, the decisions of the Supreme National Security Council are invalid before the approval and signature of the leadership.

The principle of incompetence

The principle of incompetence is a product of the principle of separation of powers and the rule of law, unlike private law, which is based on competence, in public law, the principle is based on incompetence, so the range of authority and will of legal entities is limited to the scope of the law.

Jurisdiction is one of the important issues in public law; However, the principle is that authorities and institutions do not have the competence in the public sphere. The principle of competence is closely related to the rule of law, and since the principle is based on lack of competence, only cases of competence recognized by the law for an official or institution will be accepted. The basis of jurisdiction in Islamic law is also derived from divine guardianship, and only those who are authorized by God have the right to exercise guardianship. In the most important category, competence is divided into mandatory and discretionary competence, the duties assigned to authorities and institutions according to mandatory competence must be carried out exactly according to the instructions of the law. However, in elective or selective competencies, the administrative authority has the right to choose and can choose the best among several options; However, he is obliged to consider the public interest in making a decision. It is worth mentioning that in Iran's legal system, there are institutions to monitor compliance with the principle of jurisdiction, which perform this task in different ways; The Guardian Council, the Court of Administrative Justice and the General Inspection Organization are among these institutions.

Jurisdiction should have 4 features.

* The legality of jurisdiction, (any acts of jurisdiction by the country's authorities must be documented by legal authorization, otherwise the decisions and actions taken will be condemned to invalidity.)

* The principle of legality of jurisdiction is itself the originator of the second feature; The opposite concept of the principle of legality is that only the authorities and institutions allowed by the law can exercise jurisdiction, and therefore the principle of jurisdiction is exclusive and only the institutions declared by the law will have jurisdiction. And the meaning is that other authorities and institutions do not have the authority to deal with that matter. (Stovar Sangri, 2013: p. 357)

* Principle of Mandatory Competence: A competent institution or authority cannot refuse to do it, and maybe refusing to do the duty is considered a violation and will be followed up. Since the competence in public law has similar aspects to the competence in private law, some have compared these two issues and said in terms of their distinction; Qualification is a right and a person can use it or not, but qualification is a duty. The government official cannot act or not act on his own will, but he is obliged to act within the limits set by the law and not to exceed them. (Tabatabaei Motameni, 2008: p. 409)

* The principle of limited authority: in the sense that absolute power and authority increase the possibility of corruption and autocracy to a high extent, for this reason the principle is binding on the authority of public officials, unless the law has granted absolute authority. (Shirzad, 2013: p. 92)

There are two types of competence: mandatory and discretionary competence

Mandatory competence: In this case, the political or administrative authority is obliged to exercise competence and does not have the right to choose. Article 123

Electoral authority: the political or administrative authority is free to use his authority or not. Article 124

Sometimes the principles related to the principle of incompetence in the constitution or the use of the opposite concept can be interpreted, such as:

Article 52: Drafting of the budget law bill by the government (except the government, no other authority has the authority to draft the budget law)

Article 55: Jurisdiction of the Court of Accounts (the right to audit the budget and report deductions is only within the jurisdiction of the Court of Accounts)

Article 56: The authority of the people to rule over the people (no one other than the people has the authority to rule over the people)

Principle 71: Ansari competence of the Majlis in legislation - according to the principle of lack of competence, no other authority has the right to legislate.

Article 108: Exclusive jurisdiction, legislation of the Assembly of Experts according to the number and conditions of expert members (exceptions are prescribed by the Constitution)

Article 88: The guardian council has the exclusive jurisdiction to interpret the constitution

Article 99: The Guardian Council's exclusive authority to supervise referendums and general elections (except city council elections)

Article 111: The exclusive competence of supervision, removal and selection of leadership is within the jurisdiction of the Assembly of Experts

Article 112: The Assembly determines expediency, accepts or rejects resolutions that are found to be in conflict with Sharia or the Constitution, but the Majlis insists on approving it due to expediency. (exclusive jurisdiction)

Article 159: The authority for dealing with grievances is the judiciary.

Article 161: Supervision of the courts and issuance of the unanimous decision of the Supreme Court

Article 162: Appointment of the President of the Supreme Court and the Attorney General by the Head of the Judiciary

Article 164: Dismissal of a judge by the head of the judiciary

Article 168: Court hearing of political and press crimes with the presence of a jury

Article 172: Ansari Jurisdiction of Military Courts

Article 173: Court of Justice and Anshar to deal with people's complaints about the decisions and actions of the government.

Article 176: Supreme National Security Council

Article 177: Revision of the Constitution

Legal and political responsibility of rulers

Legal responsibility of rulers

In private law, legal responsibility refers to the duty that the legislator has set for the obligee in front of the beneficiary, whose fulfillment is guaranteed by the judicial system. Example: In a permanent marriage, the maintenance of the wife is the responsibility of the husband. (Article 1111 guarantee of execution and the right to refer to the court)

In the preamble to the constitution

Many principles of the constitution have imposed many duties on the government, for example:

1- Paragraphs 1, 3, 9 and the third principle in creating a context for growth and free education up to the secondary level, eliminating unfair discrimination.

2- Article 21 regarding protection of women and special insurance for elderly and orphaned women.

3- Article 28, the duty of the government to provide employment opportunities and equal conditions for obtaining jobs.

4- Article 29. Having health and medical services and health care as insurance is a right for everyone. (According to the laws, the government is obliged to provide the above services and financial support for each and every person of the country from public revenues and incomes from people's participation.)

Compared to private law, which guarantees legal responsibilities (legal, contractual and civil or non-contractual), the constitution and ordinary laws have not provided a reference

and a path for the recovery of society members in case of government default.

According to the above principles and the lack of guarantee of legal enforcement, it is not observed.

However, in the preamble of the constitution (section of the legal guardianship of the legal guardianship), the leadership is the guarantor of the non-deviation of various organizations from their authentic Islamic duties. that the word guarantor has rights and the need to compensate damages caused by the deviations of various organizations. And in principle 171, the judge or the government is obliged to compensate for material or moral damage (responsibility of right).

Principles related to the legal responsibility of rulers

*- In the introduction of the constitution, the leadership is considered as the guarantor of the non-deviation of various organizations from their authentic Islamic duties. (The word guarantor has legal effects)

*- Article 107- The leader is equal to other people of the country before the laws.

*- Article 38, Prohibition of Torture and Punishment of Torture Officers of Legal Detention - Violation of the honor and dignity of a person who is arrested, detained, imprisoned or exiled by law is prohibited and punishable in any way.

*- Article 140 - The prosecution of the president and his deputies and ministers in the case of ordinary crimes is carried out in the public courts of justice with the notification of the Islamic Council.

*- Article 171- Compensation for the material or spiritual loss of the accused, whenever due to the judge's interpretation or mistake in the matter or in the sentence or in applying the sentence to a specific case, by the government or the judge.

Political responsibility of rulers

The correctness of political actions cannot be measured quantitatively; Therefore, the political function of the state is to use the existing ways to achieve the happiness of the society, it may be considered desirable from the point of view of some people and unfavorable and harmful from the point of view of others.

Accountability or accountability of political rulers is one of the new concepts of public law and political science and is the primary and prerequisite factor in the process of realizing democracy, social rights and freedoms in society. As long as the statesmen of a society cannot be accountable for their performance in front of the people, they are considered as inefficient and incompetent persons. which causes a decrease in people's trust in managers and political officials and grounds for public dissatisfaction (political, social...). Therefore, the accountability and responsibility of the statesmen in consolidating the foundations of the legitimacy of the political system is of great importance.

The guarantee of its implementation is the decrease in popularity among public opinion and the failure to win votes in the next elections. Political responsibility is stronger in elections where people are chosen based on the credibility of parties than where people succeed in winning votes based on their popularity and personal charisma. Because the representatives who managed to get the necessary votes

due to the party's credit are obliged to follow the party's policy, while for example the president who managed to get the votes alone. In the second term of the presidency (limitation of terms) with the end of his political life, he does not need to gain trust and popularity. But the termination of the political life of party members is not compatible with the life of the party.

In the constitution, the political responsibility of the presidency is for the members of the Assembly of Experts, the Islamic Council, the members of the city council in front of the people, who will not succeed in getting the required votes in the next term if they are not satisfied.

The political responsibility of the leadership is in front of the experts (Articles 109 and 111) and public opinion. The political responsibility of the president is in front of the leadership, the parliament and the people (Articles 122 and 134).

According to the need to balance authority and responsibility in normal laws, legal responsibility is also provided for public law persons.

Based on this, the "authority" or "right" of the administrative authority to act in specific and personal circumstances does not mean the complete and unrestricted freedom of the administrative authority in making a decision; Rather, it is necessary to observe principles such as proportionality, fairness, and reasonableness and other legal principles in making a decision, and abuse of discretionary authority will result in liability. (Hadavand and Mashhadi, 1391: p. 28)

Ensuring the rule of law and the responsibility of the rulers is directly related to the freedom

of the press. Violation or deviation from the law with free media does not remain hidden from the public opinion. (Article 22 of the Iranian Constitution is conditional)

According to Amendment No. 1 of the US Constitution, Congress does not have the right to legislate regarding the establishment of religion, denying its free practice, or restricting the freedom of speech or the press, or the right of individuals to hold peaceful assemblies, and to sue the government for damages.

Therefore, there is no restriction in the establishment of the fourth pillar of democracy (press and media) in guiding and making the government accountable to public opinion.

Conclusion

The principles guaranteeing the constitution related to the aforementioned 4 cases (limitation and alternation of power, separation of powers, rule of law and lack of competence) may have relatively provided the legal infrastructure; But it has not created the necessary legal hardware and device.

The principles of guaranteeing alternation in power require the possibility of people's real choice, which makes the parties cautious in introducing their candidates.

The presence of parties is able to organize the demands of the people (in the form of developing executive programs in case of winning votes). On the other hand, rival parties outside the government have not been able to get a share of power due to not getting the necessary seats. It will be a continuous and accurate observer and critic of the established government's actions, which creates a strong

potential to guarantee the non-deviation of the ruling party's plans.

With the development of the Guardian Council's authority to intervene in the elections of the Islamic Council and the Assembly of Experts, the representatives do not feel the need to gain the consent of the main voters.

(The intervention of the Guardian Council in the elections of the parliament, based on the law on the discretionary supervision of the parliament, which is contrary to the constitution, and the guardian council should not have announced its non-contradiction) is an example of the last part of Article 9 of the constitution because:

First: the area of powers and duties that cannot be reduced or increased absolutely for government structures determined in the constitution by the resolution of the parliament. Except the organic law prescribed by the constitution, such as Article 22 of the constitution. (Obviously, if the resolution of the parliament causes a little damage to the legal powers of the Guardian Council, it will not be accompanied by the Guardian Council, and it seems that the declaration of non-contradiction of the law on discretionary supervision is an abuse of authority.)

Secondly, contrary to paragraph 9 of Article 110 of the Constitution, the Guardian Council has not been assigned any powers and duties to verify or confirm the qualifications of the candidates for parliament representation. And Article 62 of the Constitution has left the determination of the conditions of voters and elected officials and the quality of elections to the ordinary legislator.

Article 8 of the Constitution and the supervision of the people and the press through enjoining what is good and forbidding what is bad, free parties (Article 26) provided that they do not violate the principles of independence, freedom, national unity, Islamic standards and the basis of the Islamic Republic; And paragraph 2 of Article 156 of the Constitution and the duty of the judiciary in restoring public rights and expanding justice and legitimate freedoms is one of the most important means of guaranteeing democracy and basically restoring public rights (paragraph 2 of Article 156) of the judiciary and competent justice. Therefore, caution is necessary in the following cases:

A: Judiciary should be the authority of arbitration and resolution of enmity at the level of private rights, public rights and constitutional rights; Therefore, transferring the responsibility of the prosecutor's office or their prison administration and forensic medicine is a disaster for the impartiality of the judiciary and its entry into the executive arena, and it basically causes the gathering of plaintiffs, judges and executioners. (while it should be an obstacle to gathering)

B: The judiciary is based on honorable and independent judges, so that they can perform their duty without advice and pressure, observing the principle of impartiality. This independence is maintained if the judges are not under the pressure and influence of the ruling powers, there is no place for hierarchical practices in the executive branch in this matter, the principle of job security and personal immunity, as well as the prohibition of membership or affiliation to political groups or parties, are observed.

The main judicial task in guaranteeing the constitutional rights is the supervision of the Constitutional Court and the Court of Administrative Justice. that the structure of the Constitutional Court is possible in the judiciary and with the presence of non-removable and immune judges.

It seems that the Guardian Council of the Constitution is a part of the Parliament and cannot issue judicial rulings on the interpretation of laws or elections. Basically, Article 99 of the Constitution does not envisage issuing a judicial ruling to the Guardian Council, and has appointed it as an observer.

Therefore, strengthening and guaranteeing democracy depends on including the following items in the constitution:

- 1- Limitation and alternation of power in directly elected positions by the people.
- 2- Determining the retirement age limit for appointed officials (except judges of the Supreme Court or the Constitutional Court)
- 3- Prosecutor's office, the organization of prisoners, will be held by the government.
- 4- The Constitutional Court should be established according to international standards and the ability to appeal against violations of the Constitution should be provided.

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