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THE PRINCIPLE OF SELF-DETERMINATION IN CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN

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ABSTRACT

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Right of self-determination is one of human rights whereby all individuals and nations determine their destiny in several fields themselves. According to this right, all individuals and groups can lead their affairs in several social, political, economic and cultural fields regardless of ethnicity, race, religion, and.. . The positive result of Islamic revolution is establishment of a political system called 'Islamic republic of Iran' that its real identity could be observed in constitution. The constitution of the Islamic republic of Iran confirms the right of people's governance. Since drafters of this constitution were Islamic jurists, necessarily sovereignty of the people is originated from religious principles and doctrine. Constitution of the Islamic republic of Iran has made its democratic principles based on Islamic and logic doctrine. This law has accepted the emergence of people's sovereignty in elections including leadership elections in a two levels elections by experts selected by people, election of the president, elections of Islamic parliament, and elections of council members. The constitution being Islamic and especially identity of its drafters who were religious jurists, rejects the issue noting that democratic principles of law such as sovereignty of people has imitated West and its basic rules.

Keywords: Principle of self-determination, Constitution, Democratic Principles, Elections
INTRODUCTION

As said before, all individuals and governments can lead their affairs in several social, political, economic and cultural fields; right of self-determination has two aspects:

external aspect, i.e. people's right for determining their international situation and internal aspect i.e. participation in society decision making and protecting rights of

monitories. From Islam viewpoint, God has created humans freely meaning that they can determine their destiny in several social, political, economic, and religious fields; as Quran says:” God does not change fate of people unless they would change it themselves”. Right of self-determination has a high position to the extent that it is mentioned in charter of United Nations (1966) and other statements and declarations issued by this organization. In addition, this principle is considered as a rule of human rights that violating it will raise international authority of governments.

Right of self-determination is one of human rights whereby all individuals and nations determine their destiny in several fields themselves. According to this right, all individuals and nations can lead their affairs in several social, political, economic and cultural fields regardless of ethnicity, race, religion, and.. . The concept of people’s self-determination is based on the assumption that people are holders of given rights themselves. In other words, right of self-determination includes right of democratic participation for the people derived from self-determination doctrine, such as local minorities. Right of self-determination, democracy and human rights are all located in a line as an idea rooted in human dignity, i.e. extraordinary

parallel perceptions of government’s nature and role of international law on the protection of human rights.

Generally, determination of nations’ destiny is nothing but sum of self-determination of individuals. In large scale, self-determination of people finally will manifest as self-determination of nations. This analysis is significant to know that right of choice is a unique right with several appearances, and also right of nation’s’ independence is in fact related to territory of a group of people called ‘nation’. In fact, self-determination right of nations will lose its theoretical foundation without acceptance of individuals’ self-choice; because if people have not right of self-determination so there is no reason that a group of people would have such a right. That is why right of self-determination is mentioned in charter of UN besides necessity respect to fundamental rights and freedom of individuals. Given all the above comments, it seems that right of self-determination is observed correctly in constitution of the Islamic republic of Iran. Now a question arises that to what extent the principle of self-determination is attended in the constitution? What is role of people in their self-determination (direct or indirect)?

The current research tries to discover this issue accurately and find an answer for proposes hypothesis and questions.

1. Rights caused by ‘self-determination right’

Right of self-determination has two internal and external aspects, consequently the rights caused by it arises in two domestic and foreign dimensions. External aspect of this right included people’s right in determining their international situation; also internal aspect includes people’s right in elections, protecting minority rights, right of economic self-determination, national rights and so on.

1.1. The idea of self-determination right

In international rights, the idea of self-determination is much influenced by changes in democracy thoughts and its paradoxes. Liberal democracy thinkers perceive humans’ freedom as natural and inert right which its negation means negation of humanity, besides they know democratic governance or social governance as symbol of this freedom. Democracy thinkers believe that democracy is consisted of three concepts of freedom, equality and government being conventional. The power of arguments concerning democracy idea is such that this concept had become the dominant discourse from late of 20th century till now.

All human beings are created free and equal and none of them had priority on another; also the power creates no right. Therefore, the only thing that can constitute the legislative power and right of governance are contracts made satisfactorily between people.

1.2. Political independence and people’s self-determination right(external aspect)

Right of self-determination is one of the popular principles over the past half century; so that most of people consider it as fundamental elements of legitimation. In the case of retaining wall (2004), the international court of justice reaffirmed its previous idea (1971); it perceived this principle as one of basic principles of modern international rights and interpreted the commitment of nations to it as ‘public’ type.

2.3 Democracy and people’s self-determination right (internal aspect)

The documents of self-determination right contain ambiguous evidence in this regard. On one hand, the definition presented of self-determination principle is general; it covers all nations, including non-colonial ones with international legal personality. On the other hand, most of available documents and statements prevent endangerment of integrity and political independence of ruling countries. Also, the UN announcement to

celebrate its 50th year of establishment provides about self-determination right:

‘ right of people’s self-determination considers specific situation of people in regions dominated by aliens and other types of foreign occupancy; it recognize people’s right in the framework of UN charter realizing irreversible right of self-determination. This principle means not to encourage or propose a procedure for overall or partial disintegration of political unity and integrity of ruling and independent governments that are representative of all people without any discrimination.’

2. Generalities about type of people’s participation in legislation

Nowadays, the separation of power in most regimes governing several countries of the world is basically one of options of legislature. The actions of this power performs mostly by parliament consisted of representatives selected by people; therefore, people’s participation is indirect. Of course, direct actions of mentioned power are possible through referendum and the methods in the next level similar to it and/or secondary and exceptional with condition of limitations.

2.1. Direct participation of people in legislation

Direct participation of people on legislation means that they act directly as reference of

law. although it is considered as the most pure and real aspect of people’s participation, but today the main feature of direct democracy system is based on census of public law scholars ;even Jean Jacque Roseau, the famous theorist of social contract believed that:’ this is people’s right and belongs to no one except people’. But today it is practically impossible because of high population of countries and impossibility of discussion and consultation of all people in a single place. This method perform just in some Sweden cantons in which general convention of people is held annually in a grand square for legislation, thereby the people themselves legislate directly. Also the method of direct democracy is common in cities and villages of New England, USA. However, today this type of secondary and exceptional participation exists beside main method of legislation by legislature which sum of these two methods is called ‘semi-direct democracy’.

2.1.1. Referendum

Referendum is the most common form of people’s direct intervention and participation in legislation, i.e. referring to public votes and people’s consultation about need or lack of need and also normative form and content of common laws or constitution. Use of referendum and its performance is recognized as one of aspects of legislation and a form of

people's participation in constitution of each country usually confronting with some conditions and limits. For example in France, the referendum as one of presidential rights is possible by suggestion of Executive and also with approval of senate and national parliaments both; yet it is limited to revision of constitution not compulsive in all cases. According to principle 10 of the constitution of France (1946), if revision bill is approved in second deliberation with majority of 2/3 of representatives or majority of 3/5 representatives of both parliaments, then referendum would not be required; this is also practically happened.

2.1.2. Common initiative

This direct method of legislation means 'people's suggestion on referring to public votes to modify and revise constitution, common laws and /or approval of new rules'. This method is predicted in constitution of Sweden whereby 50,000 franchise holders or 8 cantons can ask for public vote of a specific common law; also 100,000 voters can ask for referring to public votes due to overall or partial revision of constitution. The difference between mentioned method and referendum is that here the initiative of referral to public votes belongs to voters (people); while in referendum it is usually in hands of

government authorities such as Parliament and Executive.

2.1.3. Selectivity

This method is also a type of referendum with the exception that several possibilities are predicted in the proposed bill or text, and voters must choose one of them. This method is held entitling referendum because of its little difference and substantive unity of these two legislation methods.

2.1.4. People's veto

This method is a kind of optional referendum in which the voters are allowed to oppose decisions made by government authorities, such as the rules approved by Legislature. In this method, a limit for people's compliance and a chance to protest (disagreement) is realized by constitution. For example in Italy, if 500,000 voters or 5 regional councils ask for cancellation of rule approved by Parliament, the issue will be put to referendum; but its cancellation is subject to participation of majority of people eligible to vote in referendum and agreement of majority of votes.

2.2. People's indirect participation in legislation

As said before, nowadays the principle of legislation in most countries all around the world is based on people's indirect participation performed by their elected

representatives; it is called ‘indirect democracy’ or ‘representative democracy’. In this type of democracy, several organs of sovereignty of people such as legislation are performed by their representatives directly instead of direct enforcement by people themselves. This type of legislation is consistent and more compatible with modern societies with increasing population. In fact, the increasing amount of population caused low participation of people in legislation. Of course another factor had a role in this change, and it was viewpoint of philosophers and lawyers about priority of mentioned method. The philosophers of 18th century have not believed in logic and people’s perception.

On the other hand, also according to belief of most legal scholars, the indirect method of legislation has priority on referendum and direct legislation method because it is accompanied with advisement, dialogue, and chance of thinking; and because the popularity of political figure has a significant effect on result of referendum. Furthermore, using much referendum, especially in a country that its civil spirit is somehow not developed- might cause voter’s exhaustion, disorder in legislation, and political chaos. Since these best practices of legislation are applied by Legislature, thus it has a few place

for discussion in the field of people’s participation in legislation.

2.2.1. Role of tradition or social norm in legislation

Tradition or social norm means a rule that has become common between people or a group of them gradually and automatically. According to this definition, tradition is originated from people’s behavior and belief that can provide tools of their participation of the field. For a long time, tradition was source of law and historically it is superior to other sources; in primitive societies, it had determined tasks and rights of different people till with gradual development of governments, their approved rule overcame on the tradition. Nevertheless, tradition is still one of the sources of law that its levels of importance is different depending on the type of countries’ legal system; as in Anglo-Saxon countries like England and USA, it is still known as ‘common law’ that occupies an important place and also is the most important source of law.

But in countries with written or codified law system like France and Iran, law and tradition are in the first and second place of importance, respectively. Here, tradition has a high place especially in private law. In criminal law, thus it is usually known as original, direct, and binding source meaning;

therefore, role of tradition is limited in criminal justice and is located in line of secondary, indirect, and guidance sources.

2.2.2. Role of legal ideas or theories of legal jurists in legislation

Generally, legal ideas or theories of legal jurists are ‘collection of beliefs and judgments declared by scholars about interpretation of law principles’; this source counts as one of secondary or indirect sources of law that influences on legislation system of each country indirectly. The limits and extent of its efficiency depends on level of attention of Legislature to this secondary source. Legal jurists can influence of legislation indirectly through interpretation and analysis of legal acts, expressing scientific critical viewpoints about them, and also analyzing judicial opinions. Furthermore, it is possible some parliament representatives to be lawyer; they can use theories of legal jurists, also they could be legal jurists themselves and use their viewpoints in the field of legislation,. It is no doubt that most legal designs and bills are provided by jurists. On the other hand, it should be noted the impact of legal jurists’ beliefs in establishing some traditions that could be used in place of law interpretation for removing its shortcomings. Finally, the effect of mentioned beliefs must be

considered in education and recognition of legal system of each country.

2.2.3. The effect of public expectations and beliefs on legislation

One of the important social factors effective on legislation is level of public expectations relative to political system and nature of theatrical rules that has a close relation with education level and people’s awareness. Firstly, the competence of political system and in other words, accepting its legitimation by people based on public interests has a great impact on obeying the rules. In other words, some expectations of people focus on source of legislation that reflects political system of society. Anarchy and lawlessness has a direct relation with people’s mind about legitimacy of political system. Second, the nature of statute book and public expectations should be considered. People expect that authorities must establish rules and regularities they want. Accordingly, durability of statute book of each country and respecting that is based on its correlation with people’s expectations, i.e. traditions, religious beliefs, cultural criteria, costumes, and other social factors. Of course, new codifications might influence on morale and expectations of people. But it is limited to readiness of people’s psychological aspects to the topic that people’s expectations are usually complex, ambiguous, unknown

and unclear. Just a part of this issue is closer to conscious thought revealed in life; it is called 'public beliefs or public ideas'.

Generally, public beliefs and ideas affect on creation of rules, their performance, and also judgment of the court. But its greatest impact is in legislation that is usually consisted of public beliefs, it is discussed usually by proponents and opponents, and finally it leads to approval of rules by legislative body. But degree of its influence is different due to culture growth of society, amount of people's sociopolitical perception, and type of government and legislation system; as it has the greatest impact in democratic governments. In these systems, the rules change with changes formed in people's expectations and public interests. But in dictatorship governments, there is no space for public beliefs. It is no doubt that if public culture of people would not grow, it leads to lag of public belief from legislation aspect. The legislative body might sometimes not be able to be representative of people's needs, demands, and beliefs and/or could not provide enough tools and equipment to reflect people's demands and beliefs in legislation because of an unpopular legislation body; as a result, the relation between law and legislation of a country and its public opinions will be cut.

In countries that public beliefs has an importance in legislation, different methods are usually used to measure public thinking such as demographics and sampling. Accordingly, the rules agreeing with public belief are established that are easily performed with least conflict and administrative problems. Regarding the last point, no legislation system could be indifferent to public thoughts.

2.2.4. Role of political parties and public institutions in legislation

Public institutions and parties known as civil society organizations and manifestations of democracy are the most important forces effective on codification in democratic governments. In the mentioned governments that are based of elections system and codification by people's selected representatives in legislation parliaments, people generally form different groups and organizations to supply and maintain their benefits better in order to create an effective power for their considered rules and obtaining other demands and ideals. One of the most important groups are political parties that their creation and development is coincided with development of freedom of elections and parliamentary activities causing growth in political consciousness and increase in people's social and political participation. In

countries with sectarian system that parliament representatives are elected among parties successful in elections, the parties with political and parliamentary power can influence on legislation process in order to meet their goals and interests. In addition to parties, there are other public groups and trade unions that have not politic goals in contrast to political parties; they are established in form of trade groups and organizations, like labor unions and/or in format of NGOs in order to supply racial, religious, artistic, and humanitarian goals and so on. The discussed groups also are considered as other forces effective in codification of democratic governments; in this regard, they are remembered as beneficiary or interest groups. The beneficiary group is composed of people with similar goals and interests trying to supply and protect these interests through several activities; now their community is called 'interest group' if these people would try to maintain and develop their interests using different tools and methods (such as obtaining the rules to their advantage). The goal of these groups is to influence on political life in order to obtain political decisions to their advantage.

Lobbies are the most common tools for functionality and influence of these groups on

public forces such as legislation parliament. The word 'lobby' originally means 'corridor' or 'waiting room' but it is used for people who pass the corridors of parliaments and public buildings. The structure of legislation parliaments, such as parliamentary groups dependent on expert parties and commissions facilitate the mentioned factors. Currently, the NGOs influence on codification through their several activities such as education, research, information, consultation, cooperation and negotiation with legislative body and even complaint, and mass protests.

2.2.5. Role of mass media in legislation

In democratic governments that people's expectations are the most important cause for creation of new rules and regularities and/or have a great impact in legislation, the press and mass media are the most important tools that can reflect people's expectations and demands about legislation. While mass media are the most important reflector of people's expectations and demands about legislation and public beliefs of the field, they can influence on public thoughts by advertisement, information, public education and increase of public consciousness as their most important mission and function. They can change the level of public criticism relative to competent authority of legislation and nature of rules. They also can influence

on people's votes in direct legislation (referendum) and preparing people to accept, modify or change new rules and regularities. Mass media are considered as the most important advertising tools due to vast spectrum of audiences, transmission of speed, and ease of use. For this reason, unique features have a very important role in raising public awareness of society; this in turn can influence highly on level of public expectations and thoughts and consequently on codification.

3.2.6. Role of meta-parliament consultations on legislation

One of the important levels of law development is related to legal act in the commission or relevant commissions of parliament. In this level of alimentary system, we usually refer to individuals and legal persons outside the parliament and consult with them about review of the law. The related commissions invite individuals, representatives of institutions and NGOs, and legal person to ask about their opinions and perform required consultation with them; thus, the final decision is assigned to commission itself. Even though in some countries like Sweden, the people and institutions are asked to present their written opinions to the parliament and /or these consultations is one of the most important

levels in the process of law approval in USA. Of course, in some legislation systems such as England, the private design is considered in level of law development that is presented mostly by local authorities to supply local interests.

3. people's participation in legislation of the Islamic republic of Iran

People's participation in legislation is the highest display of people's sovereignty in determining destiny of their sociopolitical life. Today, this type of public participation is implemented in the light of indirect democracy and assigning the mentioned right to selected representatives of the parliament and mostly indirect by legislative body. Nevertheless, it is still possible for people to participate in this process through referendum and similar methods, of course in secondary and exceptional form. More importantly, people's indirect participation in legislation and through social effective and influential factors is notable and controversial. Thus, the necessity of adjusting legislation with religious criteria and following the Islamic legislation system influence on its performance, and also it propose specific visions and social factors somehow different from other legislation systems.

4. forms of people's participation in legislation of the Islamic republic of Iran

Since the framework of legislation system of each country is determined in its constitution, thus we review the principles related to constitution of the Islamic republic of Iran. Chapter 5 of constitution is assigned to 'nation's sovereignty right and forces caused by it' that is known as divine trust based on article 56 of people's sovereignty right on their social destiny. This principle states that: 'absolute sovereignty of humans and world belongs to God and he himself had made sovereignty of human on his social destiny. No one can deprive humans from this divine right or give it to resources of a specific individual or group'.

The constitution had appointed the actions of legislative body in two forms:

First, indirect action of legislative body according to article 56 that specifies: 'acts of legislative body are based on Islamic parliament composed of representatives selected by people, and its approvals are notified to executive and legislative bodies after passing several levels related to next principles.

Second, direct acts of legislative body according to article 59 states: 'in very important economic, social, political, and

cultural issues, the legislature acts might perform by referendum and direct reference to public votes. The demand for referring to public votes must be approved by 2/3 of parliament representatives'. According to contents of mentioned principles, the legislature acts are divided by people into two direct and indirect forms, and thus people play the main role in legislation system. Of course, the indirect acts of legislature by people and through Islamic parliament, and direct acts by referendum and direct reference to public votes are the main and secondary (exceptional) forms, respectively.

4.1. people's participation by referendum and direct reference to public votes

Referendum is the most common form of people's direct intervention in participation. in Iran's constitution (chapter 1, article 6) it is emphasized on governing the country with reliance on public votes through elections or referendum, and then two types of referendum are predicted including 'legislative referendum' about direct acts of legislature in very important issues(article 59) and 'constitutional referendum' about revision of constitution(article 57).

According to specification of recent part of this article, article 59, and contents of article 15 it can deduced that people have no role in

codification of rules but they just confirm or reject the suggestion of president or 100 representatives approved by 2/3 representatives of parliament. Therefore, it can be said that people's participation (here, secondary and exceptional) is limited, and role of public participation seems no significant.

4.2. People's indirect participation in legislation system of the Islamic republic of Iran

According to article 58 of constitution, the main acts of legislative body are done by Islamic parliament composed of people's selected representatives; therefore, people participate in the main process of legislation indirectly and through parliament. This type of legislation is the most important method of legislation in all government systems throughout the world that is considered as one of manifestations of indirect democracy; the history of its acceptance in Iran refers to constitutional revolution and approval of constitution that was faced with several consonant and opponent reactions by scholars of the era.

5. Right of people's sovereignty in Islamic republic constitution

The positive result of Islamic revolution is establishment of a political system called 'Islamic republic of Iran' that its real identity

could be observed in constitution. The constitution of the Islamic republic of Iran confirms the right of people's governance. Since drafters of this constitution were Islamic jurists, necessarily sovereignty of the people is originated from religious principles and doctrine.

The Islamic republic constitution has several viewpoints about type of governance. for example, in the first principle indicates: 'the government of Iran is Islamic republic...' , then in the second principle says: 'the Islamic republic is a system based on faith to 1) unique God, assigning the sovereignty and canonization to him, and the necessity of submission to his commands , 2) divine inspiration and its fundamental role in rules, 3) resurrection and its main role in process of humans' evolution to God, 4) God justice in creation and anatomy, 5) continual pontificate and leadership, and its main role with limited freedom toward God'. According to article 4 of Iran's constitution : 'all civil, criminal, financial, economic, bureaucratic, cultural, military, and political rules and regularities must be based on Islamic criteria. This article dominates on all principles of constitution and other rules, and its recognition is retransferred to jurists of guardian council'. During the occultation of Imam Mahdi, the knowledgeable and pious,

aware of time, courageous, master, and skillful jurist is responsible for guardianship according to article 117 of constitution'. According to article 6 of constitution:' in Islamic republic of Iran, the country must be administered by public votes, president elections, representatives of Islamic parliament, members of councils or by referendum '.Article 56 of Iran's constitution expresses that:' absolute sovereignty of humans and world belongs to God and he himself had made sovereignty of human on his social destiny. No one can deprive humans from this divine right or give it to resources of a specific individual or group'.

6. CONCLUSIONS

First, people's participation in legislation might be a little insufficient and questionable. But since this situation does not negate people's participation in this field directly or indirectly, and legislation systems have provided other aspects for people's participation, we can understand the concept, necessity and importance of this discussion. the methods of people's direct participation in legislation of several countries is predicted in form of referendum, public initiative, selectivity, and people's veto which have secondary and exceptional aspect. Article 59 of Iran's constitution also makes possible the direct acts of legislature by referendum and

direct reference to public votes in very important political, economic, and social, and cultural issues that still are not used despite approval of law.

Constitution of the Islamic republic of Iran has made its democratic principles based on Islamic and logic doctrine. This law has accepted the emergence of people's sovereignty in elections including leadership elections in a two levels elections by experts selected by people, election of the president, elections of Islamic parliament, and elections of council members. The constitution being Islamic and especially identity of its drafters who were religious jurists, rejects the issue noting that democratic principles of law such as sovereignty of people has imitated West and its basic rules. It is because of existence of those Islamic basics and teachings that could be infrastructure of such democratic aspects. These principles include the reign of man, human dignity, human equality, freedom of will and option, public responsibility, encouraging the good and forbidding the evil, principle of council, and principle of allegiance that reconsidered by representatives of assembly of experts when drafting and approving the Islamic republic constitution. Existence of such valuable basics in religious teachings will terminate the possible fission of principles of constitution,

and divergence between Islamic republic dimension and Islamism dimension; since republication and Islamism of system are both originated from a single basis.

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