studying the methods of legislative control in Iran’s legal system

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ABSTRACT: An important issue of basic law is studying of legislature's control procedures. Iran's legislature has been crystallized in structure of Islamic consultative assembly and it has the important task of legislation and political monitoring on other powers. and the other hand, Legislative control is important and necessary thing base on constitution addition to the most important factor of legislature controlling is pressure of public thought on the hand. the basic charter is tics of legal rules is to grantee proper implementation so in controlling legislature mechanisms control must have necessary implementation which is different in legal systems and orders and according to rules of each country a special style must be considered for legislative control base on constitution. The basis on control in Iran’s legal system is constitution and adoption of this law form. foundation of governance and general structure of system. Among the controlling institutions that monitor usual law base on constitution is guardian council.

Key words: constitution, control, council constitution, guardian council, legislature.

INTRODUCTION

In each country the constitution express law (right) and fundamental freedoms and structure of its society. as fundamental rights in Iran is inspired by Islamic intellectual spark specially principle of wisdom and non-stripping sovereignty of people in social and political self – determination in order to achieve a better superior rights. and importance and superiority of this law is in preserving and protecting of robbery also illegal of power. This superiority is acknowledged to be the best in the hierarchy of legal. therefore in order to preserve the hierarchy in different legal system, mechanisms, structures and organizations, there are certain methods. Which the subject of this paper is to investigate and understand the nature of these mechanism and how their performance also the nature of structure and rules of mechanism in legal system in Iran.

Principles and methods of legislative control in Iranian legal system

In order to maintain balance and harmony of force and principle of constitution from legislature offensive (Hashemi, 2008) in the most constitution of world's countries, necessity of controlling, law is considered until in harnessing the power of legislature Field and preventing superiority over other force provide independent organization to control legislation and adjust them with constitution. Also prohibition of rights threatens and individual and social freedom, violations conventional principles with legislative instruments are considered effective in controlling law. In discussion of basic control we can say, there are challenges and obstacles for matching and implementation of law specially constitution in communities which monitoring strategies even controlling laws are predicted to solve these barriers. Controlling concepts, interpretation and monitoring which have different concepts and examples but they have close relationship with each the and also their interaction cause most countries have general content.
Principles of control of the legislature in Iran

Codification of constitution in Iran doesn’t have history, the first Iranian constitution was constitutional constitution which was signed by Mozafar Aldin Shah Qajar in 30/12/1906 and constitutional government was removed in 1978 (Madani, 2006). There was Iranian constitution, which had fifty-one provisions that relates to the working of the national assembly and the senate. More over, second principle amendment of constitution was for mujtahids who had to veto legislation until each rules is viewed base on Islam from assembly. But, because of dominance of westernized intellectuals and occurrence of religious conflicts which caused to close constitutional guardian of constitution which guarantees the Islamic law, and till end of the life of Iranian monarchy this law was not revived. So one of the most important political structures of country legislature. Which is divided into two parts Islamic council and guardian council which is the basis of the legislative control is this structure and duty of adoption of rules with constitution is Islamic sharia.

Methods of legislative control in Iran

Constitution: Constitution express about conduct against government and people who identify jurisdiction, limitation or rulers power and principles and values which majority of people want is Islamic parliament is known as mastermind of governing country (by using legislation and monitoring on implementation) has special stage. on the one hand there is fear of failing in their over supervision, causes a violation of power side an the other hand. temptation to circumvent the constitution cause legislation contrary to principles (Arfania, 2007). In discussion of controlling laws by constitution there is basic that all of constitutional rules of country should be adopted with constitution and its concept and meaning isn’t contrary with principle, so this is logical result of principle of constitution superior if there is possible violation of constitution and ordinary law:

First: principle of hierarchy of superiority law.

Second: which causes dichotomy origin isn’t from one class actually is located one area.

In order to prevent of this theory, controlling rules is introduced by itself, it means that reference should be identified till he can review ordinary laws and adopt it with constitution then he gives mandate about adoption or otherwise, he wants nullity.

2. Ordinary law: Law has been adopted from Greek language and it means rule and order that in Iran it is the most important legal source of law, as we know all of legal contents are not reliable, among them there are following hierarchy:


There isn’t any special definition of ordinary law in the constitution by viewing principles of different constitution which include fifty-eight, ninety-four and seventy-three principle, we can say the form of ordinary law following provisions that has special formality runs by legislative (Zarei, 2006), as result, ordinary law is made by parliament legislators which is done with special formality base on society interest as parliament representatives identify to accept it or by referendum and direct refer to people vote or through delegation from some rules by considering seventy two principle to interior commitment with experimental law. However, the establishment and enforcement in each case subject is to approval of guardian council don’t rejected constitution and sharia and refuses presidency.

3. Law passed by house commissions: Commissions are part of legislators parliament which facility work of parliament, also give energy and mobility to it, these commissions are agents which study purpose of specialized plan and presented bills (Ghazi shariat panahi, 2005), now parliament has 13 commissions that provision 33 of internal regulations express, each of this special parliament has its own task and option, as we know main reason of dividing parliament to commission is to facility work of legislators and preventing to waste of time, because number of member’s of parliament, have problem about surveying (studying) all aspects and depth in bills in general meeting, so commission do group work base on parliament rules and how form or consist purpose and work which is facilitated to implementation.

4. Governmental institutions, companies and organization statute: According to doctrine of powers separation, parliament is just conceived as institution and legislative establishment, in general parliament can be known as Display, Negotiated, Legislation and Controller composition article 67 of constitution in competence of parliament suggest that approve of acts, is exclusive and non-conferment, while according to article 85, parliament confer part of authorities that includes experimental rules and constant approval of governmental organization statute. Sovereignty article of law require that public affairs or establishment of public institution be in law, thus establish of public and governmental institution is possible by parliament approval and essentially, this competence is not-conferment but any of these institution has statute that do their tasks this statutes have technical and specialized features and are not included of contents that can be discussed and negotiated in
parliament. However content of these statutes are similar and doesn’t need discussion. In addition to that, necessity of speed in establishing of some institutions need that recognition is done by more speed, interesting point in noted article is related to the dual monitor of guardian council (according to bill of religion and constitution) and Islamic parliament head (according to bill with laws and public policy of country). In negotiation of review council of constitution, this dual monitoring was emphasized. In this case, if there disagreement between guardian council view and view of parliaments head in approval or rejection of statute, in a way that government cannot provide both view in one reform, there is no certain solution.

5. Approved law of referendum: Polls or referendum include direct refer to public citizens of the country to receive their answer to certain question without intermediate. This question can be about rules (constitution or law) or main public issues. According to article 59 of constitution in main economical, political, social, cultural issues for practices of legislature is done by referendum and direct refer to people votes, request for public vote must be approved by two third of assembly of MPS. The point that can be discussed here is that whether guardian council has essential role in referendum? To proof this point, a method is considered and method to proof requirement of referendum issue to article 59 to approve by guardian council is fusion of article 59 and 94 of constitution (Asmaeli, 2004). According to following affirmation discussed article request for public vote must be approved by two third of assembly of MPS, in another word, request of MPS to public vote is considered as bill of parliament. Article 94 claim that all of bills in parliament must be sent to guardian council, by gathering these two articles in fact and in logical deductive view that is clear conclusion and non-damaged, face of this deduction is request of referendum from MPS is bill of parliament "and " all of bills must be confirmed by guardian council " so, as result request of referendum form MPS must be confirmed by guardian council.

Institutional control of legislature in Iran

As cited, legislature parliament according to the principle of separations of power has responsibility of main task legislation and political control of other powers. Such sequential in constitutions of countries is considered by different forms, and in one hand discussion of control of legislature has root in principle of constitution. Study of this is important issue necessary, in addition that in legislature correct operation and effective. So, requisite of control and executive guarantee is establishment of institution that in their domain work on executive operation of this law that in continue, discussion is about formation of this institutes and essence and nature and executive guarantee mechanism and the way of execution of it.

Survey of control institute in Iran

1. Guardian council: Guardian council in Islamic republic of Iran in one the most important government institution and in constitution of Islamic republic of Iran has special position, in a way that lack of it beside legislature parliament cause lack of credibility of parliament. Part of article 91 of Iran constitution claim (to protect from Islamic and constitution rules, in respect to discrepancies of Islamic council of parliament with them …, council called guardian council will be formed …))

Constitution of Islamic republic of Iran, listed various tasks for guardian council. Majority of tasks commonly are responsibility of jurists and lawyers and other is dedicated task of jurists. Through the set of task, there cause ((control on legislation)), ((explanation of constitution)) and ((control on elections)) have a lot of importance and there is lots of discussion about each of them, guardian council has binary compound. This institute has 12 members totally that are selected for 6 year period, half of them are jurists and other half are lawyers. State of jurists condition in guardian council is in article 91 of constitution, council called guardian council will be formed by following composition: 6 persons from just jurists and aware of time requirements and issues of time, they are choosing by leader position (Jafari nodution, 2006), and in another part of article 91 said about members ship of lawyers in Guardian council, 6 person of law years in different held of law, among Muslim lawyers that are introduced by head of judiciary to Islamic council of parliament and are chosen by vote of parliament (Booshehri, 1997).

2. The expediency council: in codification of constitution, sovereignty of religious law and constitution to bills of parliament was predicted without imagine lowest errors and in linear relationship of parliament and guardian council, for parliament, there remain no way except subordinate from guardian council view. Thus, however parliament can determine interests and necessity of country in codification of legislation, but practically, because of repetitive protests of guardian council with acts of parliament, for necessity of acts, in action, these two legal entity were in front of each other. In better statement ((interest of system)) was against to ((religious regulation)), that significantly was obvious. So the main reason and base of the expediency council establishment was to solve disagreement of parliament and guardian council, as article 112 of constitution of Iran claim, ((Expediency council is established to recognize the interest in cases that act of Islamic council is determined.
against of religion rule and constitution by guardian council and parliament according to expediency don't supply guardian council view and constitution in tasks cited in this law. constant and variable members of the expediency is determined by leader position. rules of the expediency is provided by its members and they are approved and confirmed by the leader )).

3. The executive : constitution of Islamic Republic of Iran hasn’t given the definition of the executive but from the total principle of it, we can find understanding of it. so discussion of the executive monitor on acts ( laws ) of Islamic council is studied in following three cases :

1. Moving control through monitor of constitution execution : it is attitude on responsibility of doing constitution by president according to article 113 of constitution. After the leader position, that most excellent official position is president, and have responsibility of constitution execution and head of the executive except in thing that directly refer to the leader(Ghazi shariat panahi,1994). Responsibility of president to protect from constitution. Includes legislature and guardian council too. This means that if parliament during legislation violate constitution principles and guardian council also confirm the violation president is responsibility to do duty in front of people.

2. having control through approval of executive regulation : according to constitution, competency of codification and approve of regulation is from president and council of ministers authority. Authority of these position is from constitution and their responsibility to execute law and execution tasks. Since, rules define generalities and there is need to executive regulation to explain details. In addition .Government and ministers have the right to approve independent regulation. So the executive has more authority form this procedure and in action of executive of laws.

3. having control through suggest bills to Islamic council : bills after approval in minister council are sent to parliament and with respect to that content of bill are specialized and has plan and program and intend of executive, so in specialized discussion of Islamic council, executive is less specialized. Form one perspective, aim of the executive is to protect sovereignty during their duty in executive tasks. In this view determine kind of control in legislature and way of obtaining to aims.

4. the judiciary : according to article 4, 91, 94, 96 of Islamic constitution of Iran, monitor o bills of the executive, from accordance view to constitution and religion is from guardian council tasks, but point is that whether, judges in appointing a vote, has authority for judiciary control ? In this perspective, way of control of the judiciary on the legislature can be studied with following forms :

1. Judiciary control on bills of the legislature form essence view : Among lawyers this difference in opinion still exist that judge during survey, if see general rule is against to one of the principle like law principles, authority to control judiciary and article 170 of Iran force judges to refuse execution of regulation and approved can he give priority to constitution according excellence regularity of laws? In constitution view, judge has the right to control the law in this regard ? Those who accepted judiciary control, usually accept the right of control for justice. For judiciary control on the judiciary, it can be said that according to article 170 of constitution: judge of courts must refuse execution of governmental regulation that is against to Islamic rules or out of the executive authority, that it hasn’t against with authority control on approvals of the legislature for justice.

2. judiciary control on bills of the executives from forms : if the law in a form and phases and approval condition has faults, for example law isn’t approved by the majority of members, this question is posed that whether judge has the right to control the law in this regard ? Those who accepted judiciary control, usually accept the right of control for justice. For judiciary control on the judiciary, it can be said that according to article 170 of constitution: judge of courts must refuse execution of governmental regulation that is against to Islamic rules or out of the legislative authority and anyone can request to cancel these principles from Supreme Court (Ghasem Zade 1955).

3. Supply of judiciary bills : bills provided by the judiciary are technically and complicated and enter and manipulation in it bring problems. This bills, during approval is changed less and most of them without change are approved and MPS, because of being specialized issues, don’t change them significantly. So procedures of the judiciary force the legislature to prove legally the tasks of the judiciary with approval of bills (Hashemi ,2008).

4. right of judiciary definition ( integrated procedure ) : Legislature is not able to predict all issues and details and rules in some cases is insufficient. Article 73 constitutions give the right of judiciary definition to judge to differentiate the right from the rule. Interpretation some time cause typical vote ( integrated procedures of judiciary) from supreme court. These votes have same validity to rules. This procedure from clear view is as kind legislation and interfere of the judiciary in the task of the legislature.

5. Criminal offenses MPs : MPS to provide freedom in executing task of membership has parliament immunity, but they don’t have immunity and membership job wont inhibit to capture and trial theme, capturing effective members of legislature by judiciary court is not without effect to legislature task. if member claims something outside of the legal authority of membership task, or remove the right of people or cause chaos and worries public minds in the country, in a way that confirm the as a crime, sovereignty of public rules is remain
power full for the members like other citizens and cited people can be chased (Hashemi,2008). In this regard, the judiciary come in action and to protect the general rights or personal right of people use execution control guarantee and do necessary tasks.

5. other controls : in this section, people control and leader monitor to legislature is stated ( on Islamic council of parliament ).

1. people control : generally there are predicted there way of people monitor an operation of parliament that can be named as follow :
   1. Establish control through broadcast negotiations of Islamic council parliament (Mehrpur,1992).
   2. Establish control through presentation in Islamic council parliament.
   3. Establish control through commission of article 90 constitution of Islamic republic of Iran.

2. leader monitoring : In general article and base of all power in Islamic republic of Iran, according to constitution under Imam leader ship and head of nation is done. Leader monitoring on Islamic council parliament is in two methods :
   1. Direct control of leader on Islamic council of parliament : leader position also like other through hearing negotiation and get news and related information control operation of parliament and members. Orders and guidance will give to the parliament that this guidance in its place is effective and solution. Main example of this is letter of the big leader to head of Islamic council of parliament about change of press rules that is sign of following parliament occurrences. In addition sometime has been seen that the leader lecture directly or with points tells things to MPS.
   2. Indirect control of leader on Islamic council of parliament : indirect control of leader on Islamic council of parliament is possible by to way :
      1. Appointment and depose and acceptance of resign jurists of guardian council. Order for referendum.

CONCLUSION

Principally in political entity that is establishing according to principle and clear base and legal entity with agreement, to protect from this principle and accepted structure, structure with special task will be programmed, Islamic republic of Iran also as norm accepted with nation wanted to establish special control entity that is set by the special task in its responsibility, provide main protect from this constant political entity obviously, things that is obtained by guardian council is integrity and cooperation and independence that has basic role in respect to structure and relation of guardian council with other basic of political entity like the legislature and the executive and judiciary in controlling rules on Islamic republic regime, doing this main role for entity is followed by facilitation and logical rights.

1. Article 91 of constitution in relation to guardian council determines that : to protect from Islamic rules and constitution from non-disagreement of bills in Islamic council of parliament, guardian council is established.
   2. According to article 112 constitution, the expediency council in disagreement cases between Islamic council and guardian council has confirmed view.
   3. In relation to survey method of guardian council, article 94 and 95 of constitution is about this. One guardian council is responsible for survey during 10 days, otherwise bill is executive one. Of course guardian council can request parliament, in this case, parliament after hearing reasons of guardian council, added ten more days at last.
   4. In relation to regulation and approved rules, according to article 136 of constitution, it must not be against the law and in this regard, head of parliament has right that if see them against law, with stating the reasons send them to minister council for revision in addition that according to article 113 of constitution, president has the responsibility for constitution execution. additionally, he as a head of legislature can inhibit execution, if see the regulation opposed to rule, in other hand, judges of courts are responsible to refuse execution of regulation and statute that is oppose to Islamic rules according to article 70 of constitution and request from supreme court to cancel them.
   5. In relation to complains of people from statute also do necessary action according to article 173 of constitution.

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