

A legal analysis of monitoring in the political system of the Islamic Republic of Iran

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ABSTRACT

Politics is determination of the will of the government which is the subject of the political sciences and the administration of affairs is execution of the will of the government which is the subject of the administrative sciences. Politics and the public affairs administration are in equilibrium with another. In other words, the administration of the public affairs is a ground for the execution of the government's will and stands against the policy which determines the structure of the public affairs administration. Investigating each of the mentioned instances entails attention to the other. Types of governmental systems based on centralization are centralized, decentralized, condensed and federal and confederate. In the centralized, decentralized and condensed governmental systems, there is a delegation of power from the central government to the local governments, while in the federal and confederate governmental systems there is no such transfer of power. In each of the centralization and decentralization systems, the national state monitors the affairs, but the type and intensity of monitoring will be different. However, the main question relating to the paper is how monitoring is taking place in the political system governing the Islamic Republic of Iran with a look at two common centralized and decentralize systems based on the Islamic Republic of Iran's constitution? In writing this paper, the library method and such tools as note taking and Internet content were applied where each was discussed while collecting data.

Keywords: General Law; Centralized political system; decentralized political system; Iran's domestic law; Monitoring in the political system

1. INTRODUCTION

Given the fact that governance styles and the country's affairs administration differ due to the type and governance of the countries, however the local decentralization is one of the common manners in governance and countries' affairs administration specifically the local

affairs. This style is principally common in complex and simple countries. In these countries, including Iran, France and the U.K. the administration of the national affairs is entrusted on the central power while the local affairs administration is vested upon the local councils and governments in a decentralized way.

With the advancement of communications and technology and the creation of a sense of liberalism among people, the states have no choice but to expand the local governance in consistency with the national sovereignty formed through the elections and referendums, so that there is a system prevailing on the administration of the local affairs and no disruption within the affairs occurs.

This is possible through the election of the local representatives by the people of the locality so that the administration of the local affairs is entrusted on the people of the locality and local democracy is created in line with the national democracy. Due to the fact that the local decentralization involves widespread dimensions its major issues are summed up over the structure, duties, powers and administrative guardianship over local decentralized entities. Today, in the administrative sciences such concepts as centralization and decentralization are vaguely applied.

This ambiguity takes roots in the political and social theories and opinions governing the society such that there is some sort of extremism in the concentration of power and decision making. Centralization and decentralization, in any way are the epitomes of power structure in decision making and one has to understand the styles the governments adopt for the administration of public affairs is not the same. Rather the governance style in any state is subject to the political, economic, geographic situations, time and space requirements, views and ideas governing the society and generally it is exposed to the political and special cultural development of the people in the community. With the appearance of Renaissance in Europe and the Industrial Revolution in coincidence with the economic growth and an initiation of an automatic life, philosophers and intellectuals proceeded to present policies for the political system structure and regime changes, offering various theories for presenting various government manners and limiting the power of the kings.

Since the history of the sovereignty in the Europe and particularly the presence of assemblies in line with the kings like the Rome Senate and the House of Lords in Britain were paving the ground for a change of the highly integrated and centralized political systems, leading to only the king in person on top of the pyramid, hence a wave of popular protests to the authority of the arbitrary rulers and establishment of democracy in countries like France and England intensified and the Great French Revolution and the that of England on one hand and the independence of America and creation of a federal state in there and later expansion of regime changes on the other hand caused the people's involvement in the political system and decision making and other life dimensions to rise.

Hence, the political systems formation changed and presence of parallel entities in line with the central sovereignty and power as the decision making entities in most local, administrative and political affairs resulted in the creation of decentralized or federal systems in the past centuries. Because the freedom of action of these entities could be extended to all aspects, including the political affairs and decision making in all arenas, therefore we witness a creation of states with a confederation system (e.g. Switzerland), federation (e.g. U.S. and Germany) and semi centralized systems.

In the centralized, decentralized and condensed governmental systems, there is a delegation of power from the central government to the local governments, while in the federal and confederate governmental systems there is no such transfer of power. In each of the centralization and decentralization systems, the national state monitors the affairs, but the

type and intensity of monitoring will be different. In sum, the centralization and decentralization systems have advantages and disadvantages which are going to be investigated.

2. CENTRALIZATION

It is administering and managing the society in which there is a centrality. In other words in this system centralization is placed in the center and engaging in any activities will be bound by a mandate from the center and there is no mere freedom of action in the mentioned system within the organizations and put it simply, it can be said that the center serves as the superior while other parts and cities act as the inferior part.

The inferior won't act arbitrarily without permission from the superior. A clear example of this could be seen in Iran, as Tehran located in the center of the political system and is regarded as the political, economic, sports, artistic and cultural center of the whole country. In a centralization system, affairs are under a same command and public affairs are administered by the ministers who are the senior decision making officials in the state organizations and are usually located in the capital.

In this type of systems, for example the Tehran's bureau of Islamic guidance and culture approves legislation and laws and these enactments will be communicated in written forms to the bureaus of the Islamic guidance and culture in all Iranian cities, so that they act in accordance with the center (Tehran) in line with written and specified administrative criteria. Enactments and arbitrary and new actions in the centralized systems are not possible in cities. In this type of system, the entity of a legal entity is already clear and there is no room for doubts.

3. DECENTRALIZATION

It is managing and administering the society as by granting independence and jurisdiction to a locality or region (unlike the centralization system). The aim of this system is the participation of people in local affairs, such that they themselves outline a plan for their own future and witness solution to the problems. In this system there is a delegation of powers and some of the powers are given by the state or the central power to counties and cities. Of reasons for the delegation is the elimination of red tape formalities and removal of congested responsibility and decongesting the centrality.

Decentralization is a special type of governance in which the central officials delegate a relatively larger decision making jurisdiction to executive and local entities so that they deal with their special affairs. While fulfilling special affairs, central officials have a moderate monitoring over the mentioned entities. In this system, any of the local organizations or establishments possess a distinct legal character from the central power and they fulfill goals with some independent tools and begin to implement their special local duties. For the granted powers not to be violated and no disruption occurs, the central government monitors the local organizations. That which should be pointed out is that the transfer of some of the government's powers to its own representatives at the local level (governments and province departments) differs with the decentralization and they cannot be included in the decentralization form (Verdinejad, 2007).

4. HISTORY OF CENTRALIZATION AND DECENTRALIZATION IN IRAN

Governments in Iran were typically individualistic, arbitrary and despotic and self-centered. A history of the Iranian affairs administration indicates that Iran by the time of the Sasanian reign and era of the Islamic caliphs and the reign of the Safavid kings was at least from a legal standpoint experiencing a centralized system. In other historic eras, some sort of federalism was prevailing on Iran. However, centralization had been a historic ethnic and geographic feature of Iran during past centuries, but using the decentralized manners in administering the public affairs has a history in Iran too. Although according to the English "Fredrick", engaging people in the administration of the local affairs was a specific custom to the Aryan race, Iranian kings and governments were inclined to centralization and often in accordance with the weakness and strength of the kings and infiltration and influence of the local Khans or other authorities created against governments the way governments were administered changed.

In the Achaemenid era, though the Achaemenid kings tended to establish a political and administrative centralization, there was no full centralization in practice and the Saterapha possessed major powers while there was a loss of centrality within the Achaemenid realms. By the time of the Parthian reign, there was no full centralization and a systemic chateau was going on. During the Sasanian kings era, there was a more centralization compared to the Achaemenid and Parthian kingdoms. The foundation of the Islamic government is based on centrality. However, in late Abbasid era the rulers were gradually beginning to disobey the caliphs and established independent local governments. In the Safavid era some complete centrality was established, but local Khans and tribesmen and rebels who were disobeying the central government always created problems against the governments' centrality policy. The Iranian government form prior to the victory of the Constitution Revolution was a despotic situation. The first signs for moderation of political and administrative centralization were seen in the law of the state and local associations in the first constitution and in the second constitution, some necessary predictions were made (including the law of councils) but despite these measures, the inherent tendency of the state organizations is towards centralization.

The current situation of the executive structure based on the centralization of administrative authorities is in the center of the country, meaning an academic centrality; business centrality, health and treatment centrality are seen throughout the country. (Mashali, 2005). The first thought of performing and executing local affairs based on decentralization in Iran since the beginning of the Constitution movement and formulation of the Constitution had been in the soul and mind of the founders of this movement, because they reflected and embodied this meaning in five-fold principles of 23, 90 and 93 of the Iranian constitution amendments. Although the creation of the local associations in most countries in the world administered through a decentralized structure and they were materialized after the Second World War and began to potentiate gradually, it is unfortunate to say that in Iran despite a long time since the approval of the constitution and in spite of all the efforts made on the path to the creation of the local associations, until recent years no results were made than hoped and efforts remained fruitless.

The government, however did not remain silent and after the end of the Second World War like any western European countries, in order to foster an establishment of an Iranian society it thought of executing a decentralized system. The government in 1950 with the enactment of the municipality laws sought to actualize this potential thought, but this faced with numerous failures, however, the thought of creating city, province associations did exist

and is being reinforced, where in 1970, the first positive step towards that was taken. The enactment of the forgoing law is not only a step for establishing a decentralized system, but it also is an embodiment of a modern phenomenon within the political and administrative system.

5. THE COMPOSITION OF THE ISLAMIC REPUBLIC OF IRAN POLITICAL SYSTEM

The composition of the Islamic Republic of Iran political system could be studied from various structural dimensions which are:

Overall structure: Under principle 57 of the Constitution the general board of the Islamic republic of Iran in a simple and monolithic government structure is consisted of three legislative, executive and judiciary powers who serve under the supervision of the Valy Faghih or the Supreme Leader. These powers are independent from each other and the leader possesses the position of the absolute Velayat rights and leadership of the Community. In fact, the coordinating role of the triple powers primarily assumed by kings and presidents in other governmental systems, in Iran the leader, as the number one figure of the nation assumes the role and the president in Iran is only the chief the executive power with broader powers. In this system and in accordance with the Velayat Faghih theories, the leader enjoys numerous powers and in addition to the prominent legal position in the structure he is qualified for religious leadership also; therefore, the leader in the Islamic Republic of Iran possesses doubled religious and legal authorities. Legislation too is performed in the Islamic consultative assembly.

This assembly is a collection of peoples' representatives who are chosen through the elections. In the country's legislation process, there is a supra entity called the guardian council which announces the contradictions between the assembly's enactments with the Islamic rules, if any (principle 91 of the constitution). The assembly, in addition to legislation enjoys such rights as investigating all the nation's affairs (principle 78), investigating peoples' lawsuits against the three powers of legislative, judiciary and executive, giving vote of confidence to the ministers and impeaching them as well as determining the insufficiency of the president. The executive power's duties and powers, excepting the affairs within the realm of the leader belong to the president and ministers. The president after the leader is number two figure of the nation and assumes the executive responsibility of the constitution (principle 113). Besides these entities, there is a new entity in the overall system structure which is called the expediency council.

The main duty of this council is to investigate the assembly's differences and the guardian council with respect to the process of the legislation as well as to play an advisory role for the leader (principle 112). Because the Islamic Republic of Iran system, in terms of structure and in a geographic and vertical dimension is monolithic, hence it lacks political levels in lower ranks. The government administrative-organizational ranks at the provincial, city and local levels within the framework of duties and powers defined or delegated by the center and the political system have an agency nature and they act upon the orders from the center in executive affairs fully. At the local, city and provincial levels, people electing the members of the city and village councils, under principles of chapter 7 of the constitution choose representatives who in the framework of the powers delegated by the law or executive duties assigned by the system centrality have the power to decide and intervene in the affairs -

-even in non-political affairs-. In fact, participation, activities and playing the roles of the people elect council entities are subject to the administration of the political system centrality. In sum, from the analysis of the center of power in the Iranian governance system it is inferred: first of all, power is distributed at a macro national level and each of the executive, judiciary and legislative powers holds power and the main power is concentrated in the hands of the leader; secondly this pattern of power distribution is in fact a natural reaction by the Constitution designers in an anti-despotic environment governing the nation after the revolution; thirdly, the power distribution pattern particularly with the presence of such entities like the guardian council and the expediency council has resulted in inconsistencies at the macro level of the system and management of affairs, engendering in problems for the totality of the governmental system, people and the whole country; this raises the necessity to review the power distribution pattern at the macro level and political system as well as to adjust systemic relations among the central elements. Geographically speaking, due to the monolithic and simple form of the political system, the issue of the political power distribution pattern is null in a spatial dimension; hence within the executive dimension and at the local and provincial levels three pillars are identifiable:

State entities as the local and regional agents affiliate to the central power, specifically local pillars of the executive and judicial powers;

The so-called Friday Imam (an Imam who leads the community for prayer on Fridays) entity and the representativeness of the VelayatFaghih assigned by the Leader;

Popular council entities elected by the people of localities (city, village, district).

The position of the Islamic Republic of Iran between two presidency systems of the United States and Britain's' assembly oriented. An overview of the legislation in various world countries reaffirms the claim that in the second half of the 20th century in most countries, people were not directly participating in the political decision making; rather they ceded the enforcement of legislation and implementing the rights to their own representatives elected. The principle of establishing an entity by the name of "assembly" (parliament) in any country is a symbol of popular sovereignty and embodiment of indirect democracy. The word democracy appeared for the first time in ancient Greek cities and it meant government by the people in general; i.e. a universal right for participation in decisionmaking in all societal affairs. This type of government is called "direct democracy". This type of government, particularly in Athens appeared in the fifth century, B.C. and citizens (except for women and slaves) used to gather in Egora and Peniks by the time of applying democracy and engaged in exchanging counseling about different issues.

The gathering of people as the legislative organization would enforce the political sovereignty directly (Ghazi, 1989). To the contrary, today we observe that a rise in the population and various professions of common people and also higher life costs and various executive problems have hindered the materialization of democracy. Consequently, "indirect democracy" emerged in which some assumed the role of legislating. Of course, in most countries, in important cases, the public vote is regarded as the criterion for the approval of the law through referendum. As stated in principle 59 of the Islamic Republic of Iran Constitution:" in important economic, political, social and cultural issues, it is possible for the exercise of the legislative power to be performed through referendum and direct reference to the votes cast by people. A request to refer to the public opinions must be approved by two thirds of the assembly representatives". The result is that the assembly is the intermediate for exercising the national sovereignty and is regarded as the center for legislation in the

democratic political system; even in the monotheistic system of Islam, despite comprehensive divine rules and regulations inspired by Revelations , an entity for legislation seems necessary, the difference being that the overall legal principles are specified and determined through the divine Revelations and due to the God's legislative rule, it is indispensable to obey these overall principles. However, in the extended realm of the permissible acts and subjects and quality of implementing the overall rules and in determining and matching the secondary titles and explaining secondary rules, huge powers are entrusted on an aware and believer man (Amid Zanjani, 2006).

Countries with assemblies are divided into two categories of one assembly and two assembly nations in terms of entity or plurality of these entities. The first category involves such countries with a simple structure which turned to the formation of a one assembly after the World War One and the second category includes countries with a federal government system which usually have two assemblies. In two assembly systems, the first assembly is called the Senate assembly or the House of Lords in England, where their members are not elected; this assembly is considered an advisory assembly. The second assembly in accordance with various nations is called the "Consultative Assembly" or the "Assembly of Representatives" or the "House of Commons". Such countries as America (Senate assembly and Assembly of Representatives), England (House of Lords and House of Commons), India (Rajsebi and LukSebi) and Switzerland (Consultative assembly of Cantons) have two assembly systems. To the contrary countries like Greece, Lebanon, and Syria are administered by a one assembly system.

The aim of introducing this brief section was to enter the main discussion: investigating the position of the political system of the Islamic Republic of Iran between the two presidency and assembly oriented systems. To attain the mentioned goal, in a case study, assemblies in Entity States, England and Iran were investigated. The reason for this selection is that based on the classification done with relation to the relationships of the three powers (executive, judiciary and legislative), these three countries cannot be integrated into systems with a mixture of powers; because in regimes with power mixture (authoritative) the person assuming the actions of all three powers (executive, judiciary and legislative) is the same and the legislator, executor and judge cannot be differentiated. The power holder can legislate the laws, and execute them while being a judge at the same time. However, in these three countries, with the research being done we witness a distinction of powers. But, prior to the main discussion, it is imperative to have a discussion about the political regimes so that the terms applied could be illustrated in this writing.

6. TYPES OF POLITICAL REGIMES

Classification and definition of political systems is not easily possible. This difficulty arises from the plurality and multiplicity of the current political systems. In accordance with the various features they have, one cannot include each of them exactly in a class of political system. Another problem lies with the definitions that are caused by the forms of the governments; because some of these definitions are so general and yet some others are so exact where none has any capacity to match with the existing reality of governmental forms (Ghazi, 1989). More importantly, all of the classifications have been based on a special value system; meaning often times efforts were made to raise the advantages of their preferred governments against the disadvantages and drawbacks of other regimes and begin to justify their own intended regimes. For instance, a western classification that raises "democracy"

against "dictatorship" intends to justify the first type regimes and discredit the second type countries; because at the preened time, the word "dictatorship" is humiliating and the word "democracy" is admirable. The same situation is true for the Communists who presented definitions about capitalism and "Socialism". Given the subject mentioned, in this part, different types of political regimes based on the popular participation in the government and also dividing the duties between the triple powers are going to be investigated:

a) Degree to which people participate in the government

On this ground political regimes could be categorized as following:

1. Despotism regimes: The salient features of these regimes are unlimited authority of the ruler from a legal view and reliance on an exploitive and unjust social system such that the rulers are not people elect. In the 20th century, a new form of despotism called "totalitarianism" came to prominence in which the government governs all social cultural and economic situations and handles it through a party taking power exclusively. Of the totalitarian regimes we can refer to the Hitler government in Germany, Mussolini in Italy and Stalin in the USSR.
 2. Democratic regimes: Different definitions are provided for democracy whose common theme is a type of governmental regime by which the majority of people are in political control of the society. The famous democratic regimes in the world are the United States, France, England and many other countries.
 3. Mixed regimes: These regimes include such countries which act as the in-between of two types of democracy and despotism. In this case, the election system is not fully removed and it does not also play the very sole role. Of the mixed governments are the Monarchy Constitutional governments with assembly representatives being elected by the people; like Jordan, Morocco and the former Iran's regime.
- b) Degree to which duties are distributed among the governing powers (executive, legislative and judiciary)

This criterion, legally speaking addresses the categorization of governmental forms where three regimes could be distinguished based on the relationship between the two executive and legislative powers: power mixture regime, separation of powers regime and power cooperation regime.

1. Power mixture regime: In such regimes, the two executive and legislative powers are intertwined and the power mixture means all fundamental decisions are adopted by a same element of the government. The power mixture involves two forms: "absolute mixture" (dictatorial) in which there is only one entity and the "relative mixture" in which there are apparently two entities, but the assembly has always a duty to approve the president's decisions by a consensus.
2. Separation of powers regimes (presidency regimes): In this form, each of the two powers assumes part of the governmental duties; the legislative power is handled by the assembly and the executive power is under the control of the president and the independence of each of the two powers is maintained. For example, the "congress" in the United States cannot oust the president and the president cannot dissolve the "congress" either.
3. Power cooperation regime (regimes with assembly at their center): Here, in these regimes, each of the two regimes are entitled to intervene with the affairs of the latter power; for example, the executive power intermediates the differences of the two

assemblies and can invite them for a creation of an extraordinary session. It can dissolve assemblies and the assemblies can through impeachment and inquiries monitor the ministers' affairs. The executive power could by giving vote of confidence compel the ministers to resign. The United Kingdom possesses this sort of regime.

It should be noted however; the separation of power is divided into two categories: the absolute and relative separation. The former is neither possible nor favorable. That which is going on in countries like America is the "power relative separation" with the superiority of the executive power called the "presidency regimes". To the contrary, in countries like England the superiority of the legislative power is clear and the assembly-centered regimes holds the reign (Ghanavati, 1998).

7. CONCLUSIONS

If the same political power executes all the affairs and monitors them, the government is said to have a political centralization. The Iranian and French political systems are examples of this political centralization. The political centralization occurs when a determining and deciding force, in the area of benefits common among all the elements of a nation and various entities of a nation; i.e. privileges of public benefits is centralized in the hands of a group of people. In a political decentralization, the local independent entities as governmental entities intervene in all local affairs, including legislation, maintaining security, creation of establishments and local organizations' affairs administration, except for that which is banned under the constitutions of the local governments or of the central government. They also have full powers in this area. Since, monitoring and control are regarded as indispensable duties of the manager and assists management in its decision making, it is necessary for the Islamic society managers to become more familiar with this important duty. Also, it is imperative for the Islamic control and monitoring to replace the Western methods. An investigation of the national legal system indicates that the principle of monitoring for a healthy flow of power has been more or less considered in the Constitution, while designing and reinforcing a comprehensive and effective monitoring system which covers different political and administrative aspects is always needed. Investigations done suggest each of the local organizations (city and village councils, local governments and the like) have an independent character independent from the central command and most of them have independent budget, tools and strategies and special staff for fulfilling the duties and objectives of their respective local governments. They meantime are in cooperation with official and unofficial centers and entities at different levels. The way they communicate with the central government appears in different forms which have fundamental differences with each other from one country to the other.

Recommendations

In this regard, in order to enhance and enabling monitoring as a great legal privilege and power structure, the following points are recommended:

1. Promoting the people's awareness level in regard to their own rights and duties of the enforcement officials within the supervisory mechanisms defined in the law
2. Efforts for creating coordination among the founding entities of supervision for preventing a possible mixture among their special task forces

3. Efforts for getting supervision out of a punitive agenda and transforming it into a guidance-encouraging mechanism which involves a reinforcement of active and healthy forces
4. Efforts to define upgraded, effective, credible executive mechanisms which have no contradiction with the dignity of people, while distancing from intimidation aspects
5. Efforts for using popular capacities and the idea of local and indigenous monitoring
6. Efforts for reducing decision making in regard to wrongful examples and subsequent effectiveness increase of monitoring in practice
7. Efforts for designing effective systems for accounting to peoples' lawsuits related with non-enforcement of legal monitoring
8. Strengthening boards to investigate administrative wrongdoing in all demonstrative levels
9. Efforts for expanding the popular monitoring realm and that of the civil supervision, particularly the press. The organizations who are working to vindicate the rights of the citizens and the clients, act only when people put forward lawsuits, whereas they have no legal responsibilities stipulated against the complaints reflected in the media and press. On the other hand, the forgoing organizations, until no complaint is filed will be neutralized and won't seek to discover or prevent violence to occur.
10. Paving the ground for formation of popular entities and NGOs and laying the groundwork for making a legal basis for them, aimed at monitoring the government's affairs and vindicating the clients' rights.

References

- [1] Ghazi A. (1989). Constitution, and Fundamental entities. Tehran: Ganje Danesh publications.
- [2] Ghanavati G. (1998). Islamic Legal System, Specialized journal of the Islamic Sciences Global center, Ghom.
- [3] Amid Zanjani A. (2007). Basic Rights. Tehran: Mizan Publications.
- [4] Mashali B. (2005). Developing a paradigm for establishing an administrative federal system in Iran. Quarterly of Islamic Sciences Teacher, Tehran.
- [5] Nabavi M. (2005). Policy of decentralization and role of national associations, Journal of political sciences, Tehran.
- [6] Verdinejad A. (2007). Centralized and federal governmental systems. Tehran: University of Tehran publications.

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