

Dominance Dimensions of People in the Constitutional Law of the Islamic Republic of Iran

Document Type: Research Article

Jalal Derakhshah*

Received: 2015/05/01

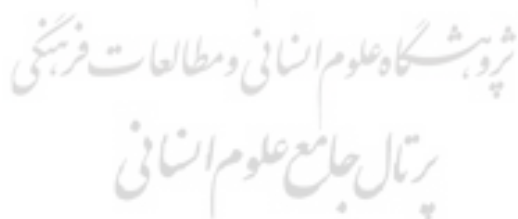
Accepted: 2015/07/10

Abstract

The question of dominance in human thoughts was associated with the formation of the first governmental organizations in the history. In this direction, a fundamental question that emerged in political and legal realm is search for the origin of power and sovereignty of government. There are two viewpoints on this matter, namely the perspective of God's sovereignty and the viewpoint of people's dominance. This paper will study the concept of sovereignty along with its impressions, beside explanation of the meaning of political sovereignty, and theories related to it in the constitutional laws of the Islamic Republic of Iran.

Keywords

Sovereignty, Constitutional Laws, the Islamic Republic of Iran, Democracy, Legitimacy



*. Professor of Political Sciences Faculty at Imam Sadiq University
j.dorakhshah@yahoo.com

Introduction

Among main questions in the political and legal philosophy, being posed since long ago during social and political human life, is search for the basis and origin of power and sovereignty of government. Several theories have been represented on this matter during the political human history in order to explain the form of relationship between rulers and their people. The question of sovereignty was formed in human mind with the formation of the first governmental organizations. Of course it has a longer history in the East, and in the West it returns to the studies of political philosophers of ancient Greece. Genealogically, the oldest viewpoint about the origin of power of government, is the perspective of God's sovereignty explained within great Godly doctrines. The main nature of such an attitude is God's absolute ownership of power, which is invested to prophets by God to conduct social, political and religious management. According to this viewpoint the origin of power is only God and it shouldn't be sought anywhere else. Meanwhile, it should be noted that the topic of Sovereignty found a newer position during the contemporary age of the West within the society, and Western thinkers such as John Bedon, Thomas Habs, Resseau, Sharl Montequu, John Lak and others attempted to study the topic of Sovereignty more deeply, and this, is considered as one of specific factors of the history of political philosophy, among old and new political schools. Among all of above mentioned thinkers Rosseau is more important; because he put an end to the long search of Western scientists after the time of Renaissance and represented a new base and position for it under the title of "public governance". For this reason, later, he was known as the founder of people's sovereignty during the new era. In his viewpoint, power and sovereignty exist among people and for them, and the factor that can hold dominance and power is the willpower of the public. The French revolution created important changes in themes related to sovereignty, and practically by formally declaring the sovereignty of people and claiming that governments act as representatives of nations opened a new stage in the

political and social life of humans. Of course, this claim that political power is in human - community is not a new topic in general process of political thinking; because it was extant in the ancient world including in ancient Greece within the topic of democratic government. But Rousseau, considered power and beside it sovereignty as belonging to all individuals in the society and eventually, introduced sovereignty as being a phenomenon common among all citizens of a government. The presentation of this theory is always followed by this question that if the origin of sovereignty is human beings and societies then how can God's sovereignty be explained which receives deep attention by religious thoughts and how would any doubt about it considered as underestimation of the most major column in religion? Is the acceptance of people's sovereignty through what today is known as democracy equal to rejection of God's sovereignty? Is there a rational way to make a relationship between these two types of power? And finally, what is the political and legal thinking that rules the systems of the Islamic Republic of Iran in its constitutional law? After the victory of the Islamic revolution with participation of all classes of people in Iran, Iranians took part in the referendum of 1358 and confirmed the type of government. This was later clarified in the first article of the constitutional law in this way: "Iran's government is Islamic republic to which, %98.2 of people gave their positive votes according to their deep-rooted belief in the government of right and Koranic justice after the Islamic revelation's victory under the leadership of Imam Khomeini in the referendum of tenth and eleventh of Farvardin 1358". Undoubtedly, this explanation in addition to showing the basis of people's power, considers the type of government as consisting of two major elements of being *Islamic*, and being *republic*, the former emphasizing on the acceptance of religious limits and the latter explaining the wishes and sovereignty of people. According to what was explained and regarding the new political and legal explanation of the government which is dependent on the theory of people's power, it must be clarified "what was represented by the Islamic Republic of Iran in order to explain its basis of power and sovereignty? and, which mechanism was provided in order to coordinate the

two bases of God's sovereignty and people's power?". These topics will be discussed in this paper.

a) The Meaning of Sovereignty

The concept of sovereignty as an essential and creative element of government should be considered as one of the most controversial concepts in the political and legal thinking. In modern law, government is defined as an entity being formed by four elements of territory, population (national community), administration, and sovereignty. Among these, sovereignty is of the highest importance so that the existence of government will be meaningless without recognition of the reality of sovereignty of the country-nation (Abolhamd, 1368: 158). In the constitutional law and in the realm of common law sovereignty is seen as the supreme power, and the authority of making final decisions in order to gather and integrate political energies within the society. In fact, these are the owners of sovereignty who order people around on the social problems. Some writers believe that sovereignty is the rulership of governments on the basis of people's willpower according to which, the government has the right to make necessary decisions about citizens, properties and resources of the country and put the decisions into force. Sovereignty is freedom and independence of the political society that governments are its symbol (Tabatabaee Mo'tameni, 1380: 54). According to different definitions of sovereignty, it should be seen as the supreme power of authority to make final decisions which is on top of all other powers (Alem, 1373: 25), having characteristics such as durability, absoluteness, publicity, and inseparability. In fact, it is a unique and independent power with two internal and external features for the country, at the same time, showing a single reality which is the power higher than any one (Shariatpanah, 1371: 188). Therefore, government has the highest political power, and thus, ruling all other social groups and putting necessary instructions into force on time. The superiority of government to other social groups is this very high social power which is known as political dominance is the symbol of civil society.

b) The Origin of Political Sovereignty

One of major questions within the realm of political philosophy is about the origin of power and sovereignty, where power is located and from where it arises, and whom the right of rulership belongs to as the highest point of power comparing to other powers. In this relation, there are some perspectives, but two major answers have been represented in the history of political and legal thoughts, one of which is the supernatural theory and the other is the theory of popular sovereignty. Of course each of these theories have some sub-theories. According to the first theory the origin of power is specific sources and political sovereignty belongs to heavenly forces and rulers obtain the right of rulership from them. According to this theory, which is among the oldest theories, power has metaphysical resources and people play no role in them. In the second theory power and sovereignty are seen as a terrestrial phenomenon and individuals have an active role in it. According to the theory of people's rulership or democracy, the law is the symbol of people's willpower and the basis of governance of the society is located in the framework of political participation of people (Tabatabaee Mo'tameni, 1380: 66-67). But what is more important here is that both theories try to explain the legitimacy of government in human societies.

c) Formation Process of the Constitutional Laws in the Islamic Republic of Iran

The victory of the Islamic revolution in Iran, and after it, the conduction of referendum in the tenth and eleventh of Farvardin, 1358 which led to the foundation of the Islamic republic system in Iran was the great result of the revolution, but it couldn't explain all ideals and wishes of the revolution and Iranians by itself. Therefore, it was necessary that those ideals and wishes be expressed within a legal and practical framework as a guideline for performance of the Islamic republic. This necessity was the legal translation of the Islamic revolution, because revolution in its legal feature is the architecture of a legal idea instead the previous one, and this was the

important duty of the constitutional law. Therefore after the formation of the Islamic republic system, the provision, and enactment of the constitutional law was the most important issue. Imam Khomeini addressing the prime minister of that time emphasized in Khordad 1358, "... It is necessary for people to hold the fate of their country as soon as possible and enjoy the fruit of their struggles in all social dimensions and obtain their last rights ..."

(sahifeh Noor, Vol. 6: 268). After the formation of the Congress for final revision of the constitutional law, in 28th of Mordad, 1358, Imam Khomeini, in a message, pointing to the extensive presence of people in the victory of the revolution and in the referendum of determination of type of government and other laws in the republic, emphasized, "The constitutional law and other laws in this country should be completely on the basis of Islam so that if even one article is against the Islamic commands, it will be seen as violation of the Islamic republic and the votes of majority of our people. Accordingly, any vote or draft presented by representatives in the parliament will be rejected and considered as against our path in the Islamic Republic. In fact the authority of representatives is limited to the boundaries of the republic and giving comments and suggestions against Islam is seen as out of their authority as parliament representatives" (sahifeh Noor, Vol. 8: 256). This attitude of Imam Khomeini explains an introduction and a conclusion. The introduction shows that people in Iran by taking part in the referendum, and before it, during the victory of the Islamic revolution were deeply interested in formation of Islamic republic, and for this reason, they voted for the benefit of Islam. Therefore, the framework of the constitutional law, including its government should be expressed within the Islamic thinking. Imam Khomeini in the end of parliament's work, suggested, "We are followers of people. People chose these men. And they wrote this law, and enacted it. They are expert in their job and finished their work just as people wanted" (Sahifeh Noor, Vol. 1: 192). Thus, they confirmed the legal system of the Islamic Republic of Iran which was enacted by experts, and people also confirmed the constitutional law of the Islamic Republic of Iran in Azar, 1358.

d) Theory of Sovereignty within the Framework of the Laws

In the formation process of a government, the concept of “sovereignty” as the supreme power to make final decision in the society, having the authority to give commands to people to do or not to do things, is of the highest importance so that without it, the concept of government becomes meaningless and impossible. In fact, all thinkers of this realm agree that power constitutes the foundation of sovereignty which is the topic of many political struggles. But what is the origin of discussion and argument is the root of sovereignty. In other words, the major questions in this realm is “Where does sovereignty origin from?”. In this relation, two groups of doctrines were mentioned earlier. It was pointed that in the constitutional law of all countries as a national agreement and legal ideology ruling those systems the doctrine determines its sovereignty. Here, we will try to explain the perspective of the constitutional law in the Islamic Republic of Iran. In order to understand these main points, the arguments of the representatives in the parliament when conducting the final investigation on the constitutional law can be of high importance.⁽¹⁾ Through the study of those arguments, it becomes clear that although some groups have emphasized on people’s power, and some on God’s sovereignty, the final result of a arguments is a new perception from between those two theories focusing on God’s sovereignty which God delivers to people and people put it into force through free elections. This concept was included in the 56th article of the constitutional law of the Islamic Republic of Iran in the following form: “The absolute sovereignty upon the world and all human beings belongs to Allah, and he has made individuals dominant on their own fate. Nobody is able to take this power from people or give it to specific individuals or groups, people use this Godly right through ways that will be discussed in the next articles.”

Undoubtedly the enactment of this article has created a link between the power of God and people’s sovereignty in a subtle way. In fact it has put an end to a long controversy in the contemporary era in Iran after the entry of

Western thoughts. It could declare the right of people to decide about their own fate, at the same time observing main principles and ideological bases of Islam. In fact it was a great success in the one hundred-year struggles during the history of political and legal thoughts in Iran. Regarding the 56th article of the constitutional law of the Islamic Republic of Iran the following points can be noted:

1. It is based on main bases of Islam, and absolute sovereignty of God upon the world, and thus, the reasonable product of monotheism principle and rejection of polytheism. For this reason it lies within the framework of Islamic ideology and referring to the holy Koran, sovereignty of the protector of the Islamic juristics, it is in fact the translation of the Koranic verse of, "Sovereignty belongs only to Allah."

2. God who has absolute dominance, has made humans dominant on their own social fate, so the origin of this authority is Allah, and he allows people to take part in determination of their future.⁽³⁾

3. The right given to individuals to make their own future is not divestible, and nobody is allowed to take it, because it was given by God and only he can deprive people of this right.

4. The right to make social fate cannot be put in the services of certain individuals or groups, in other words, it cannot act as an excuse for hegemonies of other individuals, except for when there is specific reason for it. This right can be proved and given to others only according to the law.

5. This right belongs to all individuals and in its social form, it belongs in the national frame (in the present time), and it is put into force through ways specified by the law.

As it can be seen the 56th article of the constitutional law as the doctrine of sovereignty in the legal system of the Islamic republic is the new narration of God and peoples sovereignty that undoubtedly makes our constitutional law distinguishable from that of other countries. At the same time, it explains two major columns of rulership system to which, the first article has pointed, and that is the type of government "Islamic republic" containing two

elements of Islam, and republic. Also the principle of publicity is not formal, rather, there are specific mechanisms in the constitutional law such as the 6th article, and 7th article (councils), and 110th article about appointment of the leader, all have the potentiality to control it. In fact, they emphasize on the political participation of individuals through elections.

e) Position of People

According to the modern constitutional law, the most important way to realize political participation of people in the government is elections. In fact the advancement of concept of participation of people in administrative affairs “during the time” has been associated with expansion of voting right (Tabatabaee Mo’tameni, 1980: 148). Similarly, during the past century when attempts to realize participation of individuals have been continuing, elections have acted as the stage of crystallization of those attempts. The victory of the Islamic revolution of Iran that happened with the wide presence of people as one of the most popular revolutions in the history provided necessary conditions for people’s political participation for them as an important historical wish. The leader of the Islamic revolution, Imam Khomeini, constantly emphasized on the role of people in making their fate. He suggested, “Our nation has its fate in control ... and determines it by giving its vote; appoints the president, votes to the Islamic republic, chooses the government; all affairs are in the hands of our people.” (Sahifeh Noor, Vol. 13: 29). As Imam Khomeini explains, “People don’t need guardians to take part in elections, no individual or group has the right to impose others to our nation. The Islamic society of Iran has accepted the Islamic republic and its high values and God’s sovereignty wisely and freely and they will remain faithful to them; certainly they have ability to identify and elect their best candidates” (Sahifeh Noor, Vol. 13: 206). It was based on this consideration of people’s right that in the constitutional law and according to the referendum of 1358 the type of government was mentioned in the first

article. That concept emphasized on the massive presence of people in the formation of organs of the system and free elections. Naturally, the republic system necessitated the acceptance and promotion of political and civil rights of citizens, specifically their right of free elections; because the basis of the republic was the realization of people's dominance and electivity of its political leaders by people's votes, as well as despondency of all individuals in charge of affairs. Meanwhile, the word "Islamic" has been mentioned in the title of Iran's government and according to the law to emphasize that Iran's government has Islamic content. It means that this republic government is administered by Islamic principles. Abbas Ali Amid Zanjani suggests on this matter, "Just as people elect the form of their government for political and social reasons, they have the right to elect its content for the reason of their faith and belief, according to principles and ideals that they love. Therefore, since Islam is at the highest level of sacredness for Iranians, they have elected and accepted it as the type of their government content" (Amid Zanjani, 1366: 100). According to Iran's constitutional law paying attention to people's votes and election is the most important instrument for putting people's sovereignty into force. In this direction, administration of affairs of the country, with dependence on people's votes is among basic characteristics of the Islamic republic of Iran. The 6th article of the constitutional law suggests on this point, "In the Islamic Republic of Iran, country's affairs should be administered according to people's votes, through elections, elections of the president, representatives of the Islamic parliament, members of councils and the like, or through referendum in cases specified by other principles of this law." Also in the ending part of 56th article it has been emphasized "Nobody can divest this Godly right from people." Accordingly, "Elections in the Islamic republic prevents statesmen from entering through non-popular ways (conquer, heritage and the like)" (Hashemi, 1374: Vol. 1: 272). Amid Zanjani suggests on this case that." Regarding the 6th article, the term "all affairs includes all principles existing in the constitutional law such as principles 107, 108, 109, and 110 (Amid Zanjani, 1377: 42-43); because the leader is also elected indirectly by

people, and the Constituent Assembly that elects the leader, has been previously elected by people (Madani, 1369, Vol. 7: 69). Therefore, the constitutional law of the Islamic republic of Iran gives specific and legal importance to the role of people in administration of governmental affairs, and the legal and political history of the Islamic republic confirms it. In fact, it can be pointed to the referendum of determination of type of government, the constitutional law, elections of presidency and representatives of the parliament, and members of the councils as the salient instances of people's rights.

f) Leadership of the Revolution

According to the 5th article of the constitutional law, the leadership of Moslems during the time of Absence is the responsibility of a just, pious, and proficient in the problems of the time, brave, competent, and efficient jurisprudent. In order to explain this principle, the 8th article of the constitutional law and specifically, the 108th article express the mechanisms related to elect the leader. According to that article the election of the leader is the duty of the Constituent Assembly. Thus it is clear that in Iran's legal system the leader is the highest authority who is elected through a two-stage election. For this reason the case of the protector of the Islamic juristics in the constitutional law is not against people's freedom. Amid Zanjani suggests about this point, "In the election of the leader also the national sovereignty and democracy have been observed in their complete meaning; because the members of the Constituent Assembly who are elected by people, elect the leader, thus as mentioned in the 107th article of the constitutional law, when they elect the leader, in fact, the leader is indirectly elected by people (Amid Zanjani, Bita: 165). This is the matter being mentioned even during negotiations among representatives of the constitutional law. Martyr beheshti says (comprehensive negotiations of the Constituent Assembly: 378), "We said that the center of gravity of government and society, is the leadership of such a person, and we explained how he obtains this centrality of gravity, and we said that the majority of

people should accept him as the leader, that is nobody can be imposed to people under the title of a just, pious, proficient in the problems of the time, brave, competent, and efficient jurisprudent.” In 1368 also, during the revision of the constituent law, Imam Khomeini, the leader of the Islamic revolution in a letter addressing the headmaster of revision of the constitutional law emphasized that if people elect their representatives to elect a qualified person as the leader, and the representatives introduce a qualified person, then, his leadership will be confirmed (sahifeh Noor, Vol. 21: 219). Beside the two-stage election of the leader by people, the constitutional law clarifies the dismissal of the leader in the 111th article. In that case, if the leader loses the conditions of leadership, the members of the Constituent Assembly can dismiss him; this is a sign of people’s right to make their own future.

g) Presidency

Presidency is specifically important within the framework of the constitutional law so that according to the 113th article, after the leadership, he has the highest position in the country as in charge of administration of the law except the cases directly related to the leader. For this reason, he has an extensive responsibility toward the affairs, and in fact holds the reins of power across the country. Imam Khomeini says about the importance of elections of presidency, “It is a defining day; you are going to deliver your fate to a person who is very influential in the destiny of the country (Sahifeh Noor, Vol. 11: 85). Certainly the importance of this matter is because the president is elected through people’s direct voting, and he is the representative all individuals across the country as the symbol of national sovereignty (Hashemi, 1374, Vol. 1: 133). This importance has caused the constitutional law to accept the direct election of presidency by people and the presidency should be responsive to his people. Of course, regarding the 9th clause of the 101th article of the constitutional law, after people elect the president, the leader signs its prescript. The question arising here is what this signature means. Imam Khomeini believed it confirms people’s election and

gives legitimacy to it (Madani, 1370: 46). For example, Imam Khomeini wrote in the prescript of the first president, "Since this prescript should be confirmed by a qualified jurisprudent, I appoint you as the president according to people's votes" (Sahifeh Noor, Vol. 11: 26). But doctor Seyyed Mohammad Hashemi emphasizes that since the qualification of candidates for presidency should be confirmed by the members of the assembly of protectors of the constitutional law prior to elections (that half of its jurisprudent members are elected by the leader), they exactly control the conditions of candidates and confirm their qualification, and from the other side, they monitor the election of presidency. Thus, through this election, the leader's control is implemented and that signature is not some kind of confirmation (Hashemi, 1374, Vol. 2: 102).

j) The Islamic Parliament

The presence of the parliament and legislative power, being elected through free elections and people's votes, and responsive to people is one of major manifestations of people's dominance on the affairs of the country. Historically this phenomenon returns to the age of parliamentary system, which later with Reza Khan's dictatorship, it was totally forgotten and it continued until 1357. The victory of Iran's Islamic revolution put an important influence on the opening of a new page in the political and legal history of the country and opened the path for people to decide about their fate. That is why according to the article six of the constitutional law some part of people's sovereignty is confirmed through elections of the parliament and its representatives. It was, later, emphasized by article 62. Regarding the perspective of the constitutional law, legislative power is the manifestation of power of people and subjective instance of democracy so that other powers are considered as administrators of its ratifications. Among the duties of parliament, in addition to legislation as its main responsibility, is monitoring the quality of administration of the law by other organs (67th article). The importance of people's role in the governance of affairs through legislative power can be seen in heavy duties that the constitutional law has

assigned to the parliament. Article 76 speaks about investigation on all affairs of the country as the duty of parliament, and according to its 71th article, parliament can enact laws within the framework of the constitutional law, while based on the 84th article all of representatives are responsive to people. Thus, the sovereignty of the nation through legislative power is provided through both, enactment of laws, and other responsibilities of parliament, and it is completely clear that the law is the manifestation of sovereignty and people have given this right (legislative right) to their representatives. Of course it should be noted that the Islamic parliament has the right to enact laws only within the Islamic framework. Meanwhile, the constitutional law pays specific attention to the parliament so that it clearly emphasizes that the parliament should always be in action; for this reason the 62th article suggests, “The elections of the parliament should be conducted before the end of every course in such a way that the country should not be without parliament. And according to the 68th article if for the reason of war or military occupation of the country the elections were postponed and a new parliament were not formed, in that case the previous parliament should continue its work. Meanwhile, in any article of the constitutional law the possibility of direction of parliament has not been allowed. All these cases show the high importance of people’s representatives and their right of sovereignty, confirmed by the law. The importance of parliament is completely seen in Imam Khomeini’s expressions. He says. “Parliament means that people should their representatives, and their representatives should consult with each other to recognize people’s needs (Sahifeh Noor, Vol. 12: 5). He continues, “ Parliament is the only place that decides for the nation; it is in fact the essence of the nation, it is higher than any other authority in the country “(Sahifeh Noor, 12: 18). Ayatollah Khamenei also emphasizes on this case, “The Islamic parliament is the hope-inspiring factor of the system and the manifestation of power and authority of our nation; it is a holy place that is always able to observe people’s wishes and needs through enactment of necessary laws and control the behavior of the system (Sokhane Aftab: 236).

i) Councils

Another manifestation of people's right of sovereignty in the framework of the constitutional law in the Islamic Republic of Iran is the case of councils. Councils have remarkably spread democracy across governance of social affairs and have allowed people to intervene in official affairs as well. Democracy within the framework of parliament representatives happens at national level, while within the frameworks of councils, democracy extends to more detailed parts of local level. Doctor Seyyed Mohammad Hashemi emphasizes, "Official non-focus, and participation of people in the governance of their social affairs in the form of local councils are among people's major rights known as "self-government (Hashemi, 1374, Vol. 2: 668). The constitutional law, after explaining people's sovereignty in its 6th article, points to the case of councils in that article as one of instances of people's power and then in its 7th article points to two Koranic verses of Aleomaran and Showra to confirm the importance of councils. Councils are so remarkable in the constitutional law that they have been put among general principles of the constitutional law. In fact, it has devoted a separate section, that is the 7th article of the constitutional law consisting of seven parts to the case of councils. Non-focus of power and implementation of it through local councils can fulfil people's requirements as a specific form of democracy. It means that in each place, individuals with common expectations are invited to settle their problems. This procedure, through which, people's affairs are assigned to themselves to be settled by using their own local facilities and individual capabilities is the highest level of democracy through people's participation.

j) Referendum

Nowadays, regarding the administrative difficulties of direct democracy, the technique of indirect democracy has been accepted as the best way to implement people's sovereignty. Of course according to the constitutional law of different countries, beside the indirect technique, sometimes the direct

technique is also implemental. This kind of democracy is known as semi-direct technique. It means that it is something between direct and indirect democracy in which beside the authority of the parliament to enact laws, people also can suggest laws to the parliament or have cooperation with the parliament to make necessary laws (Tabatabaee Mo'tameni, 1380: 71-72). Techniques taken into account by the constitutional laws of today's world for such cooperation are: public innovation, public veto power, referendum and public confirmation. In Iran's constitutional law also, referendum has been accepted as one of direct democratic mechanisms beside other methods of exertion of people's power. A glance at the articles of our constitutional law and referendum shows that the writers of that law have suggested referendum as a technique for direct exertion of people's willpower in order to observe nation's sovereignty and honor people's right to determine their fate (Madani, 1369, Vol. 7: 161). That is why the constitutional has pointed to it several times. The 6th article of that law in regard to people's sovereignty and governance of affairs with the help of people's votes, suggests referendum. Also in the 59th article predicts referendum in the case that two third of the parliament representatives confirm it to decide on very important political or economic issues. Meanwhile, the 177th article about revision of the constitutional law, says that after the end of revision and signature of the leader, the suggested changes should be confirmed by referendum. There are two kinds of referendum (article 59 is legislative, while the 177th article is about revision of the law). Up to this date, three referendums have been conducted, the first one was done to determine the type of government in 1358, the second one was related to the constitutional law in 1358, and the third one was about the revision of the constitutional law in 1368.

Conclusion

As mentioned in this paper, the case of sovereignty as an important and constructive element of government should be considered as one of most controversial concepts in political and legal thoughts; because without it the

concept of identity of government becomes impossible in the society as the supreme power of a country. In this direction, the origin of power of a government which is related to its legitimacy, there are two theories: supernatural theory and popular theory among which the second type is a new one that follows the origin of power inside the human society. According to what was explained about the constitutional law, it became clear that the legal systems of the Islamic Republic of Iran have pointed to both perspectives in a subtle way. In fact, emphasizing on people's sovereignty in many articles of the constitutional law, it has considered as being in the length of God's sovereignty and has put an end to the long-term controversy during the history of political thinking based on the conflict between those two viewpoints. Thus, the constitutional law should accept the intermediate doctrine, and emphasize on the idea that God is inherently the origin of any power- this is the most important teaching in Islam- and at the same time mention that God gives the right to man so that they freely decide about their social fate. Meanwhile, it should be emphasized that the constitutional law has put the basis of this perspective inside the Islamic teachings and has explained publicity and Islam of the system together. For this reason, it is clear that elections have been accepted as an instrument for implementation of people's ideas and votes in the administrations of affairs of the society both, at national and local level, and even at the leadership level as the symbol of the Islamic system by the constitutional law. Beside accepting the principle of the protector the Islamic juristics as having roots in the Shiit Velayat, the constitutional law, has assigned the election procedure of the protector of the Islamic juristics as the highest formal position in the country to the Constituent Assembly.

References

The holy Koran.

———— (1364), Detailed Negotiations of the Parliament to Study the Constitutional Law in the Islamic Republic of Iran, Tehran: General Office of the Islamic parliament, bureau of propaganda and publications, Vol. 1.

———— (1370), Sokhane Aftab, A Collection of Imam Khomeini and Ayatollah Khamenei's Sayings, Tehran: The Center of Publications of the Islamic propaganda, 1st. edition.

————, Sahifeh Noor, provision of cultural documents of the Islamic revolution, Tehran: publications of cultural documents of the Islamic revolution, Vol. 6, 8, 11, 12, 13, and 21.

Abolhamd, Abolhamid (1368), The Bases of the Science of Politics, Tehran: Toos publications, 3rd edition.

Alem, Abdolrahman (1373), Foundations of the Science of Politics, Tehran: Nashre Ney, 1st edition.

Ali khani, Aliakbar (1377), Political Participation, Tehran: Nashre Safir, 1st edition.

Amid Zanjani, Abbasali (1366), Bases of the Constitutional Law of the Islamic Republic of Iran, Tehran: Amirkabir, Vol. 1.

Amid Zanjani, Abbasali, Juristical Bases of the Constitutional Law in the Islamic Republic of Iran, Jihad Daneshghahi publications.

Ghazi, Shariatpanahi, Abolfazl (1370), The Islamic Law and Political Organs, Tehran: Tehran university publications, Vol. 1, 3rd edition.

Hashemi, Seyyed Mohammad (1374), The Constitutional Law in the Islamic Republic of Iran, Shahid Beheshti University Publications, 1st. edition, Vol. 1

Hashemi, Seyyed Mohammad (1374), The Constitutional Law in the Islamic Republic of Iran, Shahid Beheshti University Publications with Collaboration of Nashre Yalda, 1st. edition, Vol. 2.

Madani, Seyed Jalaaleddin (1369), The Constitutional Law of the Islamic Republic of Iran, Tehran: Soroosh, Vol. 7.

Madani, Seyed Jalaaleddin (1370), The Constitutional Law and Political Organs in the Islamic Republic of Iran, Tehran: Nashre Hamrah.

Tabatabaee Mo'tameni, Manoochehr (1380), Constitutional law, Tehran: Nashre Mizan, 1st edition.

———, (1364), The constitutional law of the Islamic Republic of Iran.

