

Legal foundations of lawful government, sovereignty, and state in the Islamic Republic of Iran

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Abstract: This paper aims to introduce the theories on emergence of concepts like government, sovereignty, and state and analyze the foundations of constitution and the bases of other evolutionary laws. The state can find consistency and durability within the sovereignty and government of law. Foundation of the government, sovereignty, and state in the Islamic Republic of Iran complies with the theory of "God's dominion over the world and human" which is forms the basis of Islam. This also determines the responsibility, scope of duties, and civil tasks of the state. According to the Forty-Forth Article of Constitution of the Islamic Republic of Iran, Iran's economic and social systems can function in public, cooperative, and private sectors. So, lawful government, sovereignty, and state will have their own independent identity based on legal foundations.

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1. Introduction

Constitution of countries, which ensure individual and social freedom and rights, is the foundation of the government, sovereignty, and the state formation. Sovereignty is one the most important topics in constitution that is influential on other issues. The basis of sovereignty's legitimacy and the way approaches it is effective on sovereignty exercise, the structure, position of people, and individual and social freedom and rights. Lawyers believe that three components including territory, population, and government are effective in the state formation and define the sovereignty within the government (Kyle Bagwell and Robert W. Staiger.2004). Theoretically, government and sovereignty are two separate concepts indicating their different nature. Sovereignty is originated from power, while government means structure and form. In other words, government is a method to exercise the sovereignty.

The historical evolution of sovereignty shows that it had a political nature when is first came into existence and then its legal sense became more common. The following theories justify the legal foundations of the laws and sovereignty.

1- Theory of independence and monopoly in sovereignty

2- Theory of tyranny in sovereignty

3- Theory of God's sovereignty

4- Theory of individual sovereignty

5- Theory of national sovereignty

6- Theory of popular sovereignty

7- Theory of God's dominion on the world and human.

However, some theories such as social contract theory, theory of vicarious-national

sovereignty, and the theory of original sovereignty of the state also justify the legal and legal foundations of government and sovereignty (Glazewski, Jan.National. 2010).

Percepts and foundations of Islam are the basis of fundamental laws in Iran, based on which the constitution has been set and all laws are interpreted and exercised. For example, Article 56 of Constitution of the Islamic Republic of Iran which says, "Absolute sovereignty over the world and man belongs to God, and it is He Who has made man master of his own social destiny. No one can deprive man of this divine right, nor subordinate it to the vested interests of a particular individual or group. The people are to exercise this divine right in the manner specified in the following articles."

Difference between national sovereignty and popular sovereignty is that in popular sovereignty all individuals have the right to determine their individual and social destiny (direct democracy), while in national sovereignty this right has been delegated to those elected by people (indirect democracy). In addition, part of Fifty-sixth Article of Iran's Constitution emphasizes that God has made man master of his own social destiny indicating popular sovereignty and direct democracy. Lawyers have different interpretations of the constitution that some them which are in compliance with legal foundations of Constitution of the Islamic Republic of Iran are mentioned here.

1- In specialized terminology, the constitution of a country is a set of laws that guarantees the relations of public forces and major principles of public law.

2- Constitution refers to the rules and regulations which govern the transfer and exercise of power.

3- Constitution regulates the relationship between community and government as two whole.

4- Regulations are a foundation upon which the civil society is built and from which all rules are originated.

5- The governing rules based on a country's government, the competence of forces, and individual rights and freedom is called law.

According to the Constitution, such laws should be legislated and ratified by the Parliament of the Islamic Republic of Iran. In the administrative hierarchy, common rules are ranked after the constitution and before the administrative regulations and are subjected to the approval of the Guardian Council and the acts of the Expediency Discernment Council. An international treaty is another basis of the rules. Generally, the rules of international law are circumstantially binding for the state, institutions, and organization. In this case, Article 9 of the Civil Code of Iran says, "Treaty stipulations which have been, in accordance with the Constitutional Law, concluded between the Iranian Government and other governments, shall have the force of law."

Valid Islamic references are another basis and foundation of specific and general rules in the Islamic Republic of Iran. These references include Quran, Sunnah, consensus, and reason that are of importance to the officials and for general principles of law. These references indicate the rules that are not mentioned in the text of regulations but are inalienable parts of Islamic Republic law. Court decisions that are binding for administrative agencies and organizations are adapted from Quran, Sunnah, consensus, and reason. In this case, Law of Civil Procedure says, "No official or public office can alter the decisions of the Court of Justice or prevent them to be implemented, except the court that has issued the decision or a higher court where the law defines.

Various forms of violation of legal rules in the Islamic Republic of Iran are as follows:

Ensuring the execution of the sovereignty of law principle, which is one of the most important accepted principles in the public rights, is one of the most important goals of the Iranian legal system. According to this principle, all organizations and departments of the Islamic Republic of Iran should follow the principles, foundations, and framework the law set. So, according to the law sovereignty principle, all decisions and actions taken by the administrative authorities are invalid if they are against the law (Mafi, Homayoun. 2011). Perhaps the concept of lawful state is of the stationary foundations in the field of general and specific rights

in Iran. Lawful state in Iran is considered a state which follows the Iran's legal system in its relations with the Iranian citizens. Lawful state exercises its power through legal means and citizens can resort to law against the possible abuse of power by authorities. One of the fundamental principles of lawful state in Iran is that various agencies and departments of the state are allowed to perform only the acts that are within the regulations.

So, according to legal foundations of Iranian law, lawful state is achieved when the state agencies do their tasks within the legal specified terms. The legality of the bureau and its administration is the prerequisite for a lawful state. This means that the state is obliged to comply with principles which determine its framework of action. From the perspective of the legal foundations of Iran, lawful state is achieved when administration follows a set of out-of-the-state rules and regulations and superior ones. So, the acts of the state are limited and defined.

According to the sovereignty of law principle, three foundations can be defined for the sovereignty of law:

1- The state responsibility foundations: Accepting the principle of the state responsibility towards its actions and decisions is one of the achievements of democracy. As mentioned before, democracy itself is based on liberalistic and justice-seeking thoughts which are the bases of modern administrative systems.

2- The state's scope of responsibility foundation: Its function is reflected in the following tasks:

A) The state relationship with people is based on political-administrative double management.

B) The state's legal responsibility can be divided into two fields of criminal and civil.

C) Civil responsibility of the state varies depending on the type and level of the state's actions. The state's actions can be reviewed under two titles of sovereignty's actions and administrative actions.

3- The state's civil responsibility foundation: This is credited in the following two categories:

A) Error (fault) theory: According to Article 11 of Civil Responsibility Law, civil responsibility of the state is achieved when the possible errors are originated from the hardware not the clerks.

B) Risk (no fault) theory: Responsibility of the state departments and agencies is limited to cases that fault and errors are committed to their tasks.

From a perspective, state means a distinctive whole, a independent personality, and a complex which is the subject of international law and domestic law. From another perspective, it indicates the ruling power or the rulers that get meaningful in relation with the obedient. State is also the political layer of the executive power.

Legal function of lawful executive power in Iran can be explained as follows:

- 1- The executive power has an active role in legislative affairs.
- 2- The executive power, in the process of doing its role in many matters and issues, adopts quasi-judicial decisions that affect people's rights.
- 3- The executive power, in the process of doing its role, is the center of governmental decisions. Implementation of the decisions adopted by the Parliament and Judiciary is the most fundamental task that justifies the basis of lawful state in Iran. So, preparation of bills and adopting the binding decisions validate the function of the state or the executive power in Iran.

Basically, the executive power exercise its administration based on legal foundations in form of the state and through organizational structures. The executive agencies including ministries, public institutions, firms, and various organizations are the most important and most extensive part of the executive power. Political decisions issued by the Council of Ministers convert to administrative actions and affairs in the vast and extensive administrative network. In Iranian Public Rights, Islamic Consultative Assembly is responsible for the formation of governmental organizations and agencies and determination of administrative duties. According to articles 29, 30, 31, 43, and 44 of the Islamic Republic of Iran Constitution, ownership and management of strategic affairs are the responsibility of the state.

According to Article 44 of the Islamic Republic of Iran Constitution, Iran's economic system is based on three sectors including the state, cooperative, and private with a orderly and proper planning. The state sector includes major industries, mother industries, foreign trade, major mines, banking, insurance, power, dams, large irrigation networks, radio and television, post, telegraph and telephone, aviation, shipping, road and rail, and so on. Private sector includes that part of agriculture, animal husbandry, industry, commerce, and services which are complementary to state and cooperative economic activities. Ownership in these three sectors is backed by the Islamic Republic of Iran Constitution as far as it is consistent with other articles of this chapter and is within the scope of the Islamic law. Any change in terms, scope, and condition of these three sectors is determined by the law.

Various state and administrative agencies and organizations in the legal system of the state foundations are as follows:

- 1- State agencies
- 2- Local organizations
- 3- Technical or professional organizations

4- Other legal entities subjected to the public right

Article 5 of Public Audit Act ratified the Iranian Parliament in 1366 (according to the Iranian calendar) refers to such agencies and institutions. According to this article, non-governmental institutions are certain organizational units that are established with the permission of law in order to do general tasks and services. For example, municipalities, the Red Crescent, Foundation of Martyrs and Veterans Affairs, Relief Foundation, etc. The sovereignty of law in Iran means the regulation of the lawful state and the executive power. In other words, administrative authorities should always observe the rules and regulations in their decisions and actions. Liberalistic thoughts are the origin of the sovereignty of law in public agencies and organizations. These thoughts emphasize on supporting the individuals and preventing the administrative officials to spoil people's rights and freedoms.

According to the principle of sovereignty of law in the Islamic Republic of Iran, activities of all powers and the state is under the surveillance of the law and people can report the irregularities of state agencies to the competent juridical authorities. In fact, the legislative power is the follower of the constitution and its actions are monitored by an independent and impartial supreme court. In addition, the Judiciary is itself the follower of the Constitution and Supreme Court supervises their decisions and performance.

Therefore, the actions of the executive power in the Islamic Republic of Iran should follow the law. In order to make the actions of the executive power consistent with the rules and regulations, the principle of the sovereignty of law requires an adequate enforcement. This means that there must be effective and appropriate tools to override or halt the illegal decisions. So, the legal foundations of the law regulate the relations of people with sovereignty, government, and the state in Iran and also differentiate the rules from moral norms and social customs of Islamic culture. Therefore, the legal foundations of the law are a set of codified rules and regulations that order the relations of people in the Islamic community of Iran. This way, the function and performance of three components of sovereignty, government, and the state in relation with people will endure.

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