

## Comparison of delegated legislation in the legal system of England and Iran

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**Abstract:** With the acceptance of the principle of separation of branches of government, in Islamic republic of Iran and also by considering the status of parliament in England, the task of legislating and passing country's required laws have been assigned to legislative branch which is the Islamic Consultative Assembly in Iran and parliament in England. In Iran's legal system, the constitution is allowed to only delegate this right to its internal commissions, so that after passage and during the time of testing, the basic and permanent law would be passed by the parliament and the parliament has been allowed to delegate the adoption of the articles of association of organizations, institutions and public enterprises or those depending on the government to its internal commissions or government permanently. But this delegation won't deprive parliament's right to enact the law on the same case. In England's legal system, this matter is more or less like Iran and specialized commissions are the most important commissions in the parliament which are active in various and specialized sections with having the required facilities; but in England's legal system, besides delegated cases, the queen, government and courts also codifying laws.

**Key words:** Delegate legislation; Iran; England; Legal System

### 1. Introduction

The principle in legislation is that the laws shall be enacted by chosen representatives and shall not be delegated to another individual or board. Principle 85 of Iran's constitution says that: position of representation is only for the person and cannot be delegated. This means that legislation is not the right of representatives so they are not authorized to withdraw it or temporarily give it to another reference; but rather it's a task which has been delegated to them by the constitution. The parliament is in fact a device which is the visualization of the section of legislative branch in one country and its main task is to enact binding and general regulations or laws. In England, in many cases the parliament has delegated the authority to pass the bylaws, codes and regulations associated with specific subjects according to the law to some determined extents to ministries, public authorities and public organizations such as government institutions. Islamic republic of Iran's constitution refers to the separation of the three branches "legislative, executive, judicial" and their independence in principle 57 and accepts the principle of separation of branches and has prohibited the intervention of one branch in the tasks of the other and has announced that the Islamic republic of Iran's constitution is responsible for the actions of the legislative branch and in very

important cases by referendum. According to this, "qualification" of enacting the laws, in addition to what is done through referendum, is generally controlled by and exclusive to the Islamic Consultative Assembly and the legislative branch's qualification and power is caused by the constitution and limited to some constraints that the law has determined for this branch's action; thus, actually those group of regulations can be called law that legislative branch's implementation organizations have passed according to the terms written in the constitution. Constitution introduces the legislative branch as one of the governing branches and emphasizes its independence and in principle 58, it explicitly expresses that the law is only enacted by the Islamic Consultative Assembly. Another important point that shall be considered is the Islamic Consultative Assembly's qualification in passing exclusive laws that can't be delegated, which means that the parliament cannot delegate the authority of legislation to a person or a board; nonetheless, some necessities or compromises in essential and critical cases might require the laws to be passed earlier than the normal time so that society's compromises and country's safety wouldn't be at risk. That is why the parliament delegates some the authority of legislation of some of the laws by considering the principle 72 in some essential cases and we, in the Islamic republic country, face a number of legislative authorities such as the Expediency Council, National Security Council, Supreme Cultural Revolution Council and government in specific sense.

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## 2. Law and necessity of law

The relationships between humans, countries and also interactions that are done in nature and generally each relationship and social encounter in human societies between humans and even nature, in the form, is law. Montesquieu believes that: law, in its widest possible sense, is some essential relationships which are caused by the nature of creatures. In this sense, all creatures have their particular laws; divinity, material words and creatures beyond human beings, animals and humans each have some laws which arise from nature (Montesquieu, 1362). The most comprehensive definition of the law can be this one or, at least from so many aspects, it is in compliance with a good definition of the law. Any way, any kind of definition of law can be a theory in this field from any expert. Montesquieu says that, I have reviewed human individuals more than anyone and I believe that, despite the unlimited variety in laws and methods, human's behavior or conduct cannot only be produced by whims and diversity of nature. I have determined the primary principles and found out that naturally, particular cases are the followers of that principles and nations' histories are the result of those principles; and each specific law is associated with another specific law or is dependent on a law which is more general than itself. The thing that makes a law special is its properties and the degree of its importance from the view of the implementers of the law. The legislator shall follow the law. In nature's law is also the same. Successful nations are those that respect the law (the same).

## 3. Importance of legal systems' compliance

By studying the comparative law, we can achieve hundred years of experience of the countries and use them inside the country, and the impact of it is reformation of national laws and the value and validity of the internal laws become higher and fairer. Comparative laws have an important role in providing legal regulations in the domain of business, economy and commerce and the legislator, by reading the legal regulations of other countries in the above domains or others, can provide the most proper regulation in order for country's development. This is important, especially for the countries that want to achieve development quickly. The role of comparative laws in defending national interests of a country and also for defending the independence and territorial totality, by considering the legal laws of other countries, can codify some regulations that first, prevent the intervention of foreigners; second, takes the opportunity of abuse from them; third, in order to not be latter than legal and international developments of the world and finally, in order to create immunity for nation's laws. Today, this matter is especially obvious in the domain of human rights, children rights, women rights, protection of environment and rights associated with human's identity. We can clearly

observe legal unity in the domain of European Union. In Islamic world, it is also seen but less, although we see the highest rate of legal unity in the domain of European Union.

## 4. Iran's legal system

In Iran's legal system, the law in its general concept has some types which are (in order of importance):

- 1-Constitution that has specified the general framework of country's political and social system.
- 2-Parliamentary or common laws which are the most basic and common evidence of law and are divided into established, signature and commentary ones.
- 3-Non-parliamentary laws, such as decrees, regulations and directives of the executive branch and particular institutions, like directives issued in the judiciary force, decisions of provincial, county and district councils, and general and generic decisions of the Supreme Council of the Cultural Revolution within the competence of it (Katouzian, 1381). There is also another type of laws, both in terms of how it's enacted and the position of the enactor and also in terms of degree of importance, are not in the mentioned three categories and by considering the mixed and special status and nature that they have, they are placed intermediate to constitution and common law. Orders of the leader, legal decisions of the Expediency Council and the laws caused by referendum are the clearest evidences of this type of laws. The condition of validity of the laws of each rank is its compliance with the laws of the higher rank (same). In Iran's legal system, Islamic Jurisprudence and Sharia have basic roles both in the field of legislation and also in the stage of implementation of the laws. According to the fourth and 72<sup>nd</sup> principle of the Islamic republic of Iran's constitution, legislative institutions shall consider Islamic standards as the foundation of their legislation and they are not allowed to enact laws which are in conflict with Islam's provisions. Islamic Jurisprudence and Sharia, custom, judicial precedent and doctrine are other sources of Iran's laws.

## 5. England's legal systems

Laws in the Great Britain, like most countries of the world, are divided in two categories of public laws which form the relationships between citizens and government and private laws which form relationships between individuals with each other and private organizations. Kingdom of Great Britain includes four districts, England, Wales, Scotland and Northern Ireland. Some of the laws are applied throughout the Great Britain and some only one, two or three districts. This system has two kinds of laws:  
**a- Common Law:** basic principles of the laws which are used in past cases of precedent about which the parliament hasn't decided any

particular laws or regulations. Existence of the common law means that the judge is not forced to refer to passed laws of the parliament when a new and unfamiliar case of dispute has been mentioned and instead of this, he searches legal precedents and public principles (David, Renee and Cami joufre, Spinozi, 1386)

- b- **Case laws:** particular laws that are passed as the laws of the parliament, these case laws are superior to the common law, to the extent that it also includes the cases that are being reviewed. If these laws don't offer a particular guidance, in this case the judges apply common law and if possible, they try to do what they imagine the parliament would want from them if it was informed of the case which is being reviewed (Same). Generally, sources of England's laws are these four basic sources: case laws, precedent, laws of the European Union and convention of European human rights. And in fact, there is no single series which include all of the laws of England.

## 6. Qualified legislative institution in Iran's legal system

The record of establishing the first parliament in Iran goes back to the Constitutional Revolution. According to the 57<sup>th</sup> principle of the constitution of Islamic republic of Iran, the governing forces in the Islamic republic of Iran are: "legislative branch", "executive" and "judicial branch" which are applied under the provision of the supreme leader according to the principles of constitution of Islamic republic of Iran and these branches do not depend on one another. According to the 57<sup>th</sup> principle of the constitution, actions of legislative branch are through the Islamic Consultative Assembly and it is consisted of representatives chosen by people. Parliament is the most important pillar of decision making in Islamic republic of Iran which is able to enact a law in most of the country's issues to the determined extent in the constitution. Of course at the same time, according to the 85<sup>th</sup> principle of the constitution, in some cases that are considered as essential by the parliament, it can delegate the authority of test passage of some of the laws which have a permanent aspect to its commissions or the government. In Islamic republic of Iran, the basic axis of nation's sovereignty is applied through representatives and Islamic Consultative Assembly has a very important role in governing the country in addition to legislation, which has been referred to from the principle 171 and after, like tasks such as vote of confidence to the ministers, question, remark and impeach of the president and ministers, approving the general budget, researching and investigating in all of the affairs of the country and dozens of other important tasks. The Islamic republic of Iran regime can be considered as a semi-parliamentary and semi-presidential system. The legislative branch of the Islamic republic of Iran, in a general interpretation, has two pillars. First, the

Islamic consultative assembly; its representatives are chosen directly by a hidden vote for four years. Second one is the Guardian Council whose members are chosen for six years. In some countries such as Iran, the tasks and authorities of the parliament is very wider than other parliaments of the world in terms of type of approach of public thoughts of the assembly. The reason for this matter shall be searched for in this point that both of the constitutions of Iran have been developed after two revolution and movements. It means that the conditional constitution has been developed and approved after the movement of seeking justice and constitution of the Iranian nation and the constitution of the Islamic republic of Iran after the great Islamic revolution and that is why the public thoughts of the Iranian nation has always been concerned with the wide authorities of the executive branch and thus, many of the authorities and tasks which are known as a part of duty of the executive branch in other countries, have been assigned to the parliament in the constitution of the Islamic republic of Iran. The status of legislation, in the strictest sense of the word, like other parliaments of the world, the reference of the principle 4 of the constitution to all of the criminal, financial, economic, cultural, military, political, and civil laws and regulations and etc, which are approved by the parliament and implemented after being confirmed by the Guardian Council, emphasize this importance. And principle 71 of the constitution also states this status of the parliament that the Islamic consultative assembly can enact law in most issues to the limit determined in the constitution (Ghazi, 1371); therefore, the parliament's authorities caused by this status in the constitution are:

- a-Enacting and approving the laws of "principles 4 and 71 of the constitution"
- b-Expressing and interpreting common laws of "principle 73 of the constitution"
- c- Approving the international ratifications and conventions, treaties and contracts of " principle 77 of the constitution"
- d-Approving the request of directly referring to the public votes of " principle 59 of the constitution"

## 7. Qualified legislative institution in England's legal system

The British parliament is the highest reference of legislation in this country and is consisted of two sections of the House of Commons and House of Lords each of which hold a meeting in their special halls in the West Minister palace. House of Commons is the most important council in the parliament, but in both of them, the council is responsible for enacting laws and discussing the policies. House of Commons is composed of representatives and the members of it are chosen once in five years by people and it has 635 members. House of Lords include senior clergymen, lords and non-selective individuals and have more than 800 members which is appointed hereditary or by the Queen or due to the

recommendation of the prime minister. One of the specifications of the parliamentary democratic system in the Great Britain is the existence of a close relationship between the executive branch and the legislative branch. This means that the members of the government, cabinet and board of ministers are chosen among representatives of the assembly and the prime minister himself is also one of the representatives of people and leader of the major party. Therefore, the three branches are not separated from one another and some of the experts of the basic laws also confirm the application of the relative separation of the branches for describing the governmental system of the Great Britain (Parliament's study group, legislation and research center in England, Tehran, 1382). Existence of the House of Lords as a center for aggregation of executive, scientific and human capitals of England and political and financial independence of government and electoral districts has led to the promotion of the bills from various aspects that are being reviewed technically, professionally and liberally of the representatives and the quality of the products of the legislation system. Briefly, the parliament in the Great Britain has the absolute sovereignty and can abrogate the law of enactment or the passed laws in each field. Legislation is particular for both House of Lords and House of Commons. House of Lords and Commons is permanent and does not have a legislation period and there is no selection either; selection in it is possible through inheritance with the proposal of the prime minister or the order of the king for a lifetime membership. People, who have a position in the English church or a part of judicial authorities, are members of the House of Lords. Therefore, the members of the House of Lords are all appointive and all representatives of the House of Commons are all selective (Rasekh, 1382). The members of the House of Lords have the right to participate in the election in the House of Commons, unless they resign from the House of Lords. The position of the reign can cancel this assembly due to the recommendation of the prime minister. Among the authorities, that the House of Commons has, is that money bills and common bills do not need the approval and acceptance of the House of Lords, these bills only require the approval of the House of Commons, the bill of the extension of the parliament's legislation to more than 5 years, bills that have temporary aspect, financial bills, designs and bills that are first mentioned in the House of Lords, are all approved in the House of Commons (Parliament's study group, legislation and research center in England, Tehran, 1382).

## 8. Conclusion

By accepting the principle of separation of governmental forces, in the Islamic republic of Iran and also by considering the status of parliament in England, the legislative branch which is assembly in Iran and parliament in England is authorized to the

task of enacting and approving the required laws of the country. Therefore, legislation is both right and duty of the parliament; thus, this right can't be delegated to others. But in rare and exceptional cases either in the legal system of Iran or the legal system of England, in which the subjective necessity for the best enactment of a law is felt or the density of the parliament's work is so much that the sufficient time is not necessary for approving all of the laws and lack of their approval leads to the occurrence of irreparable damages which can be delegated, that we review in both legal systems of Iran and England.

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