

COMPARATIVE STUDY OF THE CONSTITUTIONAL RIGHTS OF THE UNITED STATES OF AMERICA AND THE ISLAMIC REPUBLIC OF IRAN

NASER GAROUSI

Faculty member of Payame Noor University, Alborz, Iran. Email: Nasergarousi@gmail.com

Abstract

The political and legal system of the United States of America is one of the most important systems in the world, which has always attracted the opinion of many thinkers and experts from different countries. Democracy, federalism, and absolute separation of powers are three important features of this political system. This political system is classified as a presidential system in the world's common classifications, although some legal scholars prefer the term "inflexible system" due to the increase in the amount of practical cooperation and legal and customary tools at the disposal of each of the powers. Use "powers" instead of "absolute separation of powers". On the other hand, the political system of the Islamic Republic of Iran has presented a new model of the political system with the design of the Islamic government based on divine sovereignty, with the seasoning of the mechanisms of the common systems of the world and paying attention to the representation and election systems, which in appearance is part of the mixed systems (semi-parliamentary- semi-presidential) but it seems that it cannot be enclosed and limited in one of the formats mentioned. The distribution of power and the model of government in the Islamic Republic is based on religious thought and the system of religious authority, and at the head of Iran's system of separation of powers is a leader with special powers, during which all the elements of the government operate under the guidance and supervision of legislation, judicial and executive. do This research examines the fundamental rights of the above-mentioned two political systems around the three basic axes of fundamental rights issues, i.e. the government, political institutions and the rights of the nation. Our assumption in this research is that the two mentioned systems, while having similarities, have differences in form and content, as democracy, federalism and absolute separation of powers in the American political system are considered among the fundamental rights of this country. In the political system of Iran, Islam is the main and important basis of the fundamental rights of the Islamic Republic. In addition, in terms of similarity, in both political systems and as an example, elections are the most important mechanism for exercising the right of sovereignty.

Keywords: Democracy, Islamism, Absolute Separation of Powers, Jurisprudence, Federalism

INTRODUCTION

As we know, the subject of comparative law is the study and comparative study of the laws of different countries and its analysis and results. This comparison can also be done in constitutional law, which is considered one of the main branches of public law. In the adaptation, commonalities and differences between countries' laws are usually examined and evaluated. Increasing public awareness and better understanding of domestic laws and amending existing laws and establishing new laws can be considered as functions of comparative study. Various classifications have been presented for the comparative study of the fundamental rights of countries. Among them, we can mention geographical, economic, political and legal classifications. The study of the comparative law of the fundamental rights of the political and legal system of the United States of America and the Islamic Republic of Iran has been carried out based on the political and legal classification around the three axes of

the fundamental rights, namely the government and its forms, political organizations and institutions, and the rights of the nation. "Political classification is based on political realities and considering political institutions in the broadest sense of the word, and in other words based on political-social tendencies" (Harisinejad, 2018, 31). Also, legal and rule-based, autocratic or authoritarian political systems and systems based on the separation of powers can be the focus of study in legal classification. Considering that in the study of the constitutional rights of the two countries, the United States of America and the Islamic Republic of Iran, it is done with the focus on the important issues of the constitutional rights. Therefore, both classifications have been considered. The main question of this research is that what are the most important differences and similarities between the constitutional rights of the United States and the constitutional rights of the Islamic Republic in the central issues mentioned?

Our hypothesis in this research is that the constitutional laws of the two countries have differences and similarities, paying attention to the divine sovereignty in the constitutional laws of Iran and Iran, the sovereignty is obvious at the first glance. This is the fact that the origin of the sovereignty in the American political system is absolutely reserved for the people, no higher power than that is acceptable, while the method of establishing the constitution in the two countries can be considered similar, in this case, both of the constitutions are non-grant and therefore democratic. are considered in relation to the fundamental rights of these two countries and comparative studies, a lot of research has been done in different dimensions, but it seems that the current comparison is novel because it is not one-dimensional and is studied from different dimensions. It is a descriptive-analytical library.

2- The government and its pillars and forms

The government is used in three different concepts, one is the concept of political society, which is synonymous with the country, the second is political power, which means government, and the third is the concept of executive power, which is discussed in the issue of separation of powers. The political system of the United States, as well as the political system of the Islamic Republic of Iran, currently has the above three concepts because the basic pillars of the formation factors include land, population, and supreme political power. Land is an important factor in the formation of a state and "a state without land has no concept like a state without population" (Tabatabaei Motmani, 2015, 35). The territory determines the limits of each country's power and rule, and the territory of each country's rule is determined through land, air, and sea boundaries.

The United States of America is located in the North American continent between Canada and Mexico and the Atlantic and Pacific Oceans, and this country has 50 states and one federal area, five autonomous territories and a set of scattered islands with an area of 9.8 million square kilometers.

The Islamic Republic of Iran also includes 31 provinces and 462 cities with an area of 1.648.195 square kilometers located in West Asia. The population or human group is considered the second pillar of the state, and just as the state has no meaning without the land, it also has no meaning without the population, and the state cannot be formed in its absence.

"Individuals must live in a certain land to be able to exercise political power over them" (Khosravi, 2018, 80).

With a population of more than 330 million people, the United States is the third most populous country in the world, which distinguishes itself from other nations in the world under the title of the American nation. The Islamic Republic of Iran also ranks 17th in the world with a population of more than 83 million people. The supreme political power is also referred to as the third pillar of the country-state "and with its set of measures and stable actions, it has a noble influence on the human society based in a certain land, as far as it is possible to logically accept the concept of the state-country, the acknowledgment of the same power It's great". (Hashmi, 2010, 1996)

Supreme political power has had an inevitable existential necessity since the beginning of the formation of human society. With the changes of history, the personal concept of power has changed to a subjective concept. At present, each human community has an institution that has supreme power and is not under the care and supervision of a higher authority to limit it. The domain of sovereignty is also domestic and international. "Sovereignty is a concept related to political necessity and rooting the origin of the legitimacy of power and who has the right to rule; In response to the question why citizens obey the supreme political power, the most important factor is the belief in the legitimacy of the ruling power" (Khosro, 2018, 83). Various opinions have been presented regarding the origin of the legitimacy of sovereignty. It means to find the source of the authority of the state and the authority of the ruler in the society, the most important of which is the theory of divine rule (neocratic) and the theory of popular rule (democracy). In the neocratic theory, sovereignty has a supernatural origin and does not belong to humans, while in the theory of democracy, free will and public consent are the origin of sovereignty.

With this description, in the Sasi system of the United States of America, the supreme political power is established by the people, and power does not have a personal meaning, and the main source of sovereignty and power is the people, and democratic governance is accepted. This issue is raised in different parts of the constitution of this country and its preamble states: "We the people of the United States, in order to form a more complete union, to establish justice, to ensure national comfort, to ensure common defense, to promote public welfare, and to preserve the blessings of liberty." For ourselves and the future generations, we establish and establish the present constitution for the United States of America" (Al Moks, Torabi, 2006, 108). In the first principle of the first section, it is also noted: "All legislative powers in this constitution are vested in the United States Congress composed of the Senate and the House of Representatives." Also, in the second part of the first principle, it continues, "The House of Representatives consists of members who are elected by the people of different states every two years". The state legislature puts. Elected state legislatures are also elected by the votes of the people of each state. On the other hand, in the political system of the Islamic Republic of Iran, although there is no comprehensive definition of sovereignty in the constitution, two types of origins of sovereignty can be identified by studying the principles of the constitution. "Sovereignty in the laws of the Islamic Republic of Iran originates from two origins and

foundations, God's sovereignty over the world and man, and man's sovereignty over his destiny" (Mohammadi, 2015, 81).

This is important and emphasized in Article 56 of the Constitution, "Absolute sovereignty over the world and man belongs to God, and He has made man the ruler over his social destiny. No one can deprive them of this divine right or serve their interests." a specific person or group, and the nation applies this God-given right in the ways described in the following principles" (Hosseini Nik, 2012, 56). Since legitimacy in the Islamic system is dependent on God and originates from Him, the Islamic government is based on the divine legislative will, on the other hand, the people's vote and support play an essential role in the realization and establishment of the government, and therefore popular sovereignty is part of divine sovereignty. Takes. The Constitution of the Islamic Republic of Iran has paid attention to two theories of divine sovereignty (theocratic) and popular sovereignty with special mechanisms, which is referred to as religious democracy.

2.1 Form of government

Governments appear in different forms in the international and political scene and are divided into simple (single structure) and composite (multi-fabric) categories in terms of simplicity and composition. Single-building countries have a single center of political action. Political power in its totality is exercised by a single personality by the central government. "All the members of the political group or population of the country are under the banner of a government and obey a political authority" (Qazi Shariat Panahi, 2005, 81). The simple government has three types of unity: the unity of the structure, the unity of the community, and the unity of the land. In terms of the form of administration, Iran is one of the simple countries. Simple countries are divided into two types: simple (centralized) and complex (decentralized). It is not optional, while simple, complex or decentralized "in line with the efficiency of the country's public administration and the use of local and decentralized requirements and capacities, and increasing people's participation and public and local decisions, and preventing various management problems caused by It has been designed for expansion and population" (Khosravi, 2018, 97). In this type of system, contrary to the simple one, some powers that are local, administrative, executive and managerial are entrusted to institutions and authorities outside the center and located in provinces and cities through various systems. But in local affairs, political, judicial, legislation and general political policies, it is still done in a centralized manner by the central authorities. In the complex system, both lack of concentration and lack of density are considered. In terms of the form of government administration, the Islamic Republic operates in a simple and complex manner. Islamic city and village councils are an example of lack of centralization and delegation of authority to local authorities such as governors, governors and prefects are also an example of lack of concentration. In the non-concentration system, hierarchical supervision is applied from the center to the smallest political unit and local officials, while in the decentralization system, the supervision of government officials is ethnic supervision. Currently, both of these systems are considered and practiced by the political system of the Islamic Republic of Iran, based on Article 1 of the Law on the Definition and Rules of Country Divisions approved in 1983. The elements of country

divisions are: village, village, city, district, county, and province. Also, based on Article 2, the village is the origin of country divisions, and based on Article 3 of the same law, the village is the smallest unit of country divisions.

In Iran's political system, all political officials are appointed from the center. National elections and management are done from the center. Each city of the province is considered a constituency. Other than the elections of the city and village Islamic councils, which is a local election, other local elections are not considered. The central government has the authority to legislate for all parts of the country and the organization of judicial affairs in the whole country is hierarchically subordinate to the center and at the head of it is the head of the judiciary and the Supreme Court. Governors, governors and prefects are appointed by the center as political officials. Besides, other administrative and executive officials based in the place are also appointed by the central authorities and their powers are defined in the system of non-concentration and sometimes lack of technical concentration.

In the country's administration system, the center's authority is the principle, and its authority is general. Unless the legislator assigns special authority to local authorities. The formation of Islamic city and village councils, the subject of Article 100 of the Constitution, is an example of this type of authority. The authority of this people's body is administrative, not political.

On the other hand, in a mixed government, the command center is not the same, but each part of the country has political sovereignty. These countries have several centers of political activity. "The multi-layered state is the administrative gathering of several ruling governments, centered around a central power and entrusting a certain amount of political authority to a person or institution that is placed at a higher level than the member states" (Shariat Panahi, 2005, 86 and 87). Federalism is one of the types of composite governments. Federalism is a kind of tendency towards unity and integration by creating a government above local governments.

The federal government has three laws. One is the law of Fardasht, which means the creation of common institutions including the territory and functions of all members of the federal state beyond the member states. Second, autonomy means that each of the member states, while accepting common and single institutions, also maintains its organizational political competence and third. Is the law of participation, that is, the united states participate in the formation of federal bodies and general divisions in the territory of the federal government through their representatives. The United States of America is currently one of the countries of federalism, and federalism is considered one of the types of multipartite countries. Proponents of federalism say that the absolute sovereignty of the government leads to the centralization of affairs, if the power should be divided and the local and geographical requirements of different regions of the country should be taken into account. The American constitution is based on the three basic principles of democracy, federalism and absolute separation of powers. This federal system was formed at the end of the 18th century, and before that, the Confederate system consisted of thirteen independent American states. Today, the United States of America consists of 50 states, each of the states has its own separate constitution, which is similar to the federal constitution, but on a smaller scale, that is, at the state level. The division of jurisdiction

between the federal government and state governments was regulated by the 10th Amendment to the Constitution. Accordingly, "the competence of federal governments is specific and the competences of state governments are general." In other words, the competences of the central government are enumerated in the constitution and are limited to the same cases, if, except for the enumerated cases in favor of the federal government, all other matters are within the jurisdiction of the state governments, that is, what the constitution is within the jurisdiction of the central government. It is not included in the competences of state governments" (Harisinejad, 2010, 139).

The most important competence of the federal government is regulating foreign relations and managing international affairs, managing defense affairs, maintaining harmony among state governments, regulating trade, bankruptcy, monetary issues, citizenship, etc., and guaranteeing the form of a republic for the government of states. In contrast, state governments have general jurisdiction, such as legislation in personal situations such as marriage, divorce, inheritance and everything related to individuals, determining the rules governing elections, legislation in educational and health matters, social security, drugs, etc.

As you can see, there is no political pluralism and rights in unified and simple governments, and the decision-making centers are single. On the contrary, in the federal government like the United States, there is multiple decision-making and political pluralism. "Every government below the national level has legislative and executive powers and local resources, and also has a constitution of separation" (Zarei, Rezainejad, 2013, 293). With this description, in the American federalism model, in contrast to Iran, "sovereignty is shared between government levels and political authority is not concentrated in the center" (Ibid, 305-306).

3. Political organizations and institutions

3.1 Constitution

To identify political organizations and institutions and ruling powers in the country, including the legislature, executive and judiciary, their duties and how they relate to each other, the constitution is usually referred to. The constitution of any country is considered the most important source of fundamental rights. "Constitution refers to the fundamental and orderly norms of a society, in which, while emphasizing the fundamental rights and freedoms of citizens, it explains the mechanism of the institutions and powers governing the society. be" (Hashmi, 2010, 47). The constitution is a national covenant and a common ideal that binds all the people of the nation together. Dr. Bijan Abbasi writes about the concept of the constitution: "Constitution is a text or a text containing a set of superior rules that defines the legal system of political power in the government and guarantees the rights and freedoms of the people" (Abassi, 2008, 51). Progressive constitutions are usually the result of struggles and actions that took place in the countries since the 18th century. Constitutions are divided into customary, written, inflexible and flexible.

The Constitution of the United States is the first written constitution in the world and it has remained in force for more than 220 years and despite the amendments (26 amendments). It covers the section. This law was approved in 1787. The Constitution of the United States is

currently considered the most important document identifying and explaining the constitutional rights of this country. "The Constitution of the United States is one of the best constitutions in the world because it is an almost subjective law and the role of custom in it is small, unlike the laws of other countries such as England" (Sheikh al-Wakalai, 1966, 45). The federal constitution of the United States of America is a type of inflexible (rigid) constitution. This means that, on the one hand, ordinary laws, whether federal laws or laws of any of the federal member states, which are against and contradict one of the articles of the constitution, will be automatically enforced, on the other hand, revising its principles requires going through the process. And performing the rituals is relatively heavy.

According to the fifth article of the US Constitution, revision of the said constitution is possible in two ways, one by the initiative of the Congress, which is done with the approval of a two-thirds majority of each of the two houses, and the other at the request of the legislatures of two-thirds of the member states. which follows the formation of a convention, that is, a special assembly for this purpose. Revisions made by resorting to any of the aforementioned methods will become effective and will be an integral part of the Constitution when two-thirds of the legislatures of three-fourths of the states or conventions that are formed for this purpose in the states are approved. be placed Article 5 of the United States Constitution states: "Whenever two-thirds of the representatives in the House deem it necessary, the Congress shall propose amendments to the Constitution or, at the request of two-thirds of the legislatures of different states, call for the formation of an assembly for The legislative proposal, approved by three-fourths of different states or assemblies of three-fourths of the states, will be valid as a part of the Constitution for all intents and purposes. Any of the above two methods of amendment can be proposed by the Congress" (Constitution of the States) Muttahida, Majlis Research Center, Rc.Majlis.Ir).

Another point about the constitution is related to the authority and how to protect the principles of the constitution against possible violations of laws, bylaws and other regulations. With the constitution at the top, there will be a possibility of disrupting the country's legal and political structure and violating people's rights and freedoms. For this purpose, countries usually provide the necessary measures to protect the constitution and its principles. The political and judicial methods are two common methods in the world to protect the constitutional laws. The political method is the method used in the French legal system. Along with the former presidents, they have the responsibility of monitoring the constitution. But in the United States of America, the control of laws and monitoring of the constitution is done using the judicial system. Basically, the founder of this method is America. Two types of courts are provided for judicial supervision of the implementation of the Constitution. One is through normal courts, in this case, whenever one of the parties in a lawsuit objects to the compliance of the normal law governing the constitutional case, the judge is bound to interpret the law in accordance with the constitution. In the United States of America, dealing with the conflict of ordinary laws with the Constitution is in the form of an objection, except in exceptional cases, and all courts are obliged to deal with the issue if one of the litigants objects to the conflict of the cited law, and in case of conflict with the Constitution Refrain from implementing it.

Another way is through special courts. In federal governments, the supreme courts, in addition to supervising the compliance of ordinary laws with the constitution, are also responsible for supervising the compliance of the constitutional laws of member states with the federal constitution. According to Article 6 of the United States Constitution, the Supreme Court of the States United supervises the implementation of the constitutional laws of the member states with the federal constitution". (Hashmi, 2013, 72)

Another word is related to the interpretation of the constitution. The interpretation of the constitution takes place when the provisions of the constitution do not have the necessary clarity. In this case, we should see what is the real clear intention of the constitution? And which meaning and interpretation should be implemented. Usually, in the constitutional laws of the world, the issue of interpretation is taken into consideration and the institution, authority and competent authority are determined for interpretation. It is considered based on its precise implementation" (Mireshkari, 2019, 30). With this description, the interpretation of the Constitution in the United States is a judicial interpretation and the reference is the Federal Supreme Court.

The last point related to the constitution is how the constitution of the United States of America is created and formed. Usually, due to the way the constitution of the world is formed, the world's constitutions are created during special events and events such as: decrees of governors, major developments and the creation of new countries. Future. The manner and command of the rulers, which is also called a kind of constitution, is usually given by the rulers and according to their own taste and desire, regardless of the fundamental rights of the nation, under the influence of pressures and disturbances, and in order to maintain the position of ruling power and from top to bottom. and it is an undemocratic method. In the way of creating new countries, the constitution happens as a result of the collapse of a country, the creation of new countries, or the independence of a country from dependence on another country. But in the way of major developments, the constitution is created after important events such as revolutions, coups, and power transfers. "In this case, the new rulers, based on their ideals and desires, and the people, usually try to amend or establish a new constitution, such as the revolution of the Islamic Republic of Iran, when the revolutionaries and the people repealed the old constitution and approved the new law".(Khosravi, 2018, 55) The constitution of the United States is definitely not of the type of decree of the rulers and granted or a coup, but the constitution of this country emerged after independence from Britain and was approved by the representatives of the thirteen states. Granted constitution is an undemocratic method, while the American constitution was created by revolutionaries and people who were fed up with their fate from British rule in order to establish freedom and justice. The United States Constitution was adopted by the Constituent Assembly in Philadelphia in 1787. This Majlis was part of the ruling Majlis in terms of powers. The characteristic of the ruling Constituent Assembly is that "it has the full authority to formulate and approve the constitution simultaneously." In this way, the mentioned parliament writes the draft of the law, discusses and negotiates about it and finally votes on it" (Abbasi, 2008, 83).

The formation of the Constitution of the Islamic Republic of Iran in a completely democratic manner and after the victory of the Islamic Revolution and the fall of the royal regime in two stages, first by the Assembly of Constitutional Experts and then through a referendum in 2006, was approved and finally approved by the nation. The Constitution of Iran was amended and revised in 1989 with the proposal of Imam Khomeini (RA) and the formation of a council called the Constitutional Review Council, and then it was approved by the people of Iran through a referendum. The Assembly of Constitutional Experts was not the governing body of the Constituent Assembly. In the preamble of the constitution, he refers to the role of the people in establishing it and also to the role of the constitution in rejecting oppression and any kind of tyranny and oppression, and considers it to be a reflection of the heart's desire of the Islamic. The founding body (constituent body) under the title of the Assembly of Constitutional Experts was an elected body consisting of jurists and jurists, whose members were elected by direct vote of the people. This institution ended its work after fulfilling its mission.

The Constitution of the Islamic Republic of Iran is classified as one of the codified (written) constitutions. Although this law was revised in 1368, amendments and additions were made within the original text, and therefore it is also called a text. Also, referring to the 177th principle, it can be said that the Constitution of the Islamic Republic of Iran is one of the inflexible (hard) laws, and revising it requires special procedures. In any case, the initiative to revise the constitution is in the hands of the leadership, unlike the legal system of the United States, which is in the hands of the federal parliament and the states. In this case, the leading authority, after consulting with the Expediency Council, will propose amendments or additions to the Constitution to the Constitutional Review Council through a decree addressed to the President. After the approval and signature of the leadership, the approvals of the Council must be approved by the absolute majority of the participants in the referendum by referring to public votes. Also, based on the aforementioned principle of Islamism and republicanism, the system is unchangeable and therefore unrenovable.

The method of protecting the Constitution of the Islamic Republic of Iran is not the judicial method used by the United States legal system. Although the judiciary also supervises the regulations and government regulations in terms of their non-contradiction with the laws through the Court of Administrative Justice, but the main supervision is the responsibility of the Guardian Council based on the 4th and 91st articles of the constitution. The mentioned method is a special method whose members are determined by the leadership, the judiciary and the parliament. This method is closer to the method of the French Constitutional Council (political method).

Of course, the supervision of the Guardian Council is a retrospective supervision and is done after the law is passed by the Parliament, and the supervision of the Supreme Court of the United States on the approvals of the Legislative Assembly of this country is also retrospective. But there is also legislative supervision in the Constitution of the Islamic Republic of Iran. The seventy-second article of the constitution refers to this type of prior supervision and says: "The Islamic Council cannot enact laws that contradict the principles of the official religion of Keshu or the constitution..." (Hosseini Nik, 2013, 64). If we add Article 113 of the Constitution to the

mentioned cases, in this case the President is also considered as one of the authorities supervising the Constitution. In addition, based on the 177th principle, the judges of the courts are also obliged to refrain from the implementation of the approval letters and government regulations that are against Islamic laws and regulations or outside the limits of the powers of the executive branch. And anyone can revoke such regulations. request from the Court of Administrative Justice.

In addition to the above-mentioned direct and indirect and official supervisions, we can also refer to informal supervisions including the supervision of civil institutions, parties, organizations, citizens and media. "In the process of this supervision, all decisions and actions in accordance with the constitution are made transparently due to the supervision of the citizens, and if they contradict the principles of the constitution, it becomes very easy to recognize this, and if they act contrary to the principles of the constitution, the citizens by applying pressure, reminders, protests, criticisms and marches, they can force the rulers to implement the principles of the constitution" (Khosravi, 63). The fourth principle of the constitution, which mentions the issue of enjoining good and forbidding evil, can greatly help the supervision of citizens in this regard.

The interpretation of the Constitution of the Islamic Republic, like the United States, is not considered a judicial interpretation. Rather, the official authority of this interpretation is the Guardian Council of the Constitution, which is a non-judicial institution. The ninety-eighth article of the constitution assigns this interpretation to the Guardian Council, and any interpretation must be approved by three quarters of the members of the Guardian Council.

3.2 Political institutions, ruling powers, their duties and relationships

3.2.1 The system of separation of powers in the United States

The principle of separation of powers has its roots in the history of England's constitutionalism, which emerged with patient efforts to limit the power of the king. The fame of the principle of separation of powers is mainly attributed to Montesquieu, while the idea of separation of powers has a very long history and traces of it. can be found in the history of ancient Greece. According to Montesquieu: "In all societies, the freedom of individuals is always in danger." Because anyone or any organization that has power naturally tends to abuse it. Therefore, the single powers should be divided and government duties should be entrusted to multiple powers, except by the separation of powers, freedom cannot be guaranteed" (Hashmi, 2010, 243). Of course, in his opinion, separation of powers is not enough to ensure people's freedom, but a kind of power balance should be established between the three powers so that one of the aforementioned powers cannot gain priority and superiority over the other two powers.

The American constitution has organized "power" in a thought-out and logical way and it is not made and dealt with custom like the English constitution. In 1787, despite their differences of opinion, the American people reached an agreement regarding the principles and rules related to power, its relationship with society, and how to establish a compromise between order and freedom. While the usefulness and speed of government actions were expected to be prioritized, they realistically focused their attention mainly on "security". That is, how to

protect themselves against the power that is inherently excessive, against its concentration in the hands of one person or even an institution, and against authoritarianism, and how to protect freedoms. Therefore, with a libertarian mentality and by carefully studying the works of Locke and Montesquieu, they analyzed it as much as possible in order to prevent the corruption of power. In this regard, both the vertical separation of powers, i.e. the division of power between the central government and the state governments, and its horizontal separation, i.e. the division of power between the three powers, were achieved in an almost absolute manner. Therefore, it can be said that the basic rights of the United States are based on three foundations: democracy, federalism, and the absolute separation of powers. The founders and authors of the Declaration of Independence and the Constitution of the United States of America, due to their concern about the rise of the European monarchy in which the king's power was "absolute power", designed their new political system in such a way that an individual or institution unable to obtain "absolute power". One of the important principles of the American political system is the separation of powers. "Power in America is divided between the presidency and the Congress" (Akbari Karimabadi, 2013, 49). Like the United States, Iran's constitution has paid attention to the issue of separation of powers. The revolutionaries of 1357 had clearly touched the harmful effects of tyranny and the efforts of the former regime in frequent changes to the constitution to increase the power of the king. On the other hand, the system based on velayat-e-faqih and Islamic government caused the separation of powers in Iran to have its own characteristics. In addition, the separation of powers in the Islamic Republic of Iran is not considered an absolute separation, and the vertical separation referred to in the American political system does not exist due to the centralized administration of Iran.

In the fifty-seventh article of the Constitution of the Islamic Republic of Iran, in addition to stating the governing powers and the basic institutions of the nation's sovereignty (legislative, executive and judicial), the separation of powers and their independence from each other is specified. The meaning of the independence of powers is that none of them can directly and directly interfere in the work of another. And each of them should perform their duties and use their powers separately, without the influence of other powers. The separation of powers in Iran is of the type of relative separation and cooperation of powers under the guidance and supervision of the religious authority. The fifty-seventh principle has put the activities of the powers under the supervision of the leadership, and in other words, the control and adjustment of the governance actions through the three powers is defined and designed by a special solution under the title of "guidance system" (Omid Zanjani, 1987, 2976). In any case, the independence of powers has been recognized in both political regimes.

If we want to classify the world's political systems based on legal criteria, four big legal and political systems can be identified from each other. These systems include parliamentary systems (relative separation or cooperation of powers), presidential systems (absolute separation of powers), mixed systems. (semi-presidential-semi-parliamentary) and authoritarian systems (mixing or non-separation of powers) in this case, "the absolute separation of powers is the distinguishing feature of the American political system from other political systems" (Haris Nejad, 2009, 140).

Also, considering the duties and powers of the powers in the constitution of the Islamic Republic of Iran, especially the legislative and executive powers, it seems that the type of system of separation of powers in Iran is closer to the mixed system (semi-presidential-semi-parliamentary). Another point is that in the presidential regime of the United States of America, there is no power called the power of moderation, while the leadership at the head of the Islamic Republic of Iran system as a supervisor and guide can prevent any disruption in the performance of the powers' duties. The point of connection and sharing of powers is leadership, and three powers perform their activities by placing him as the axis" (Zamzam, 2011, 151).

3.2.2 Executive branch

According to the second article of the Constitution, the executive power is delegated to the President of the United States of America. The executive branch of this country is one pillar and its totality belongs to the head of Jamhu, who is the head of the country and the head of the government. The president of the United States is elected by the people of the United States for a period of 4 years and in a two-tiered and indirect manner. The president must get an absolute majority of the votes of the electorate, i.e. at least 270 votes, and if this does not happen, the House of Representatives, among the 3 people who got the highest votes of the electorate, one person who has the highest vote as the president, and the Senate as well. He chooses one of the first two people as the vice president, "the most powerful and influential political person in the country is the president" (Haris Nejad, 2010, 145). Although the powers of the president are not unlimited, they are very important and practically not limited to the executive field. His powers can be identified in the field of judicial and executive legislation.

In the field of legislation, the president is deprived of the right to initiate laws, but he can draw the attention of the congress to the necessary legislations through the annual message to the congress or through the annual budget provided to the parliament and indirectly the proposed texts. Present yourself through the aforementioned. Also, based on the first principle of the constitution, the president can refuse to sign the approvals of the Congress and veto them in a way. Although this authority is used less and its legal importance is less, but its importance is more practical and by threatening the veto, it can affect the process of negotiations in the parliament. In any case, the most important authority of the president in front of the parliament is the right of veto, while the constitutional lawmaker has determined the solution to remove it for the parliament. In this case, the parliament can convert the same resolution into a law with the approval of two thirds of the members of both houses.

The president also has some privileges in the judiciary, the right to pardon convicted criminals, the appointment of federal judges and Supreme Court judges are among the most important of these powers and privileges. In the shadow of these powers, the president has a significant impact on the evolution of judicial procedure. Also, considering the competence of the Supreme Court in dealing with election disputes, it seems that the influence of the president on the fate of the election can be significant, in addition to the powers, privileges and role of the president in the Congress and the judiciary of this country, as it was said, the president in The executive branch also has the authority to enact bylaws, chair the federal administrative organization, command the armed forces, and manage foreign policy.

In the system of separation of absolute powers of the United States, "Congress cannot overthrow the president and ministers, and the executive branch does not have the right to dissolve the congresses" (Judge Shariat Panahi, 2005, 175). In the executive system of the United States, the vice president is the head of the Senate at the same time, while the Senate has the right to interfere in some executive affairs, such as the appointment of ambassadors, members of the Supreme Court, ministers, etc., with this description "a group of rights" Scholars refrain from using the term (absolute separation of powers) and do not consider it possible in practice and prefer to use the term (inflexible separation of powers) instead" (Ibid., 176).

According to Article 113 of the Constitution, the executive power in Iran is the responsibility of the president and the leadership. "(Hosseini Nik, 2013, 87). In other words, unlike the United States of America, the executive branch in Iran has two pillars, one pillar is under the authority of the leadership and the other pillar is under the authority of the president. Also, unlike the political system of the United States of America, in Iran's legal system, the president is not considered the first official position, and the first official position of the country in Iran is the leadership position. The legal reference to the formality of the executive branch as an independent executive branch is the fifty-seventh principle, in which the governing branches are mentioned as the legislative, executive and judicial branches.

The president of Iran is elected for a period of 4 years by direct vote of the people based on the 114th article of the constitution, and his re-election is unimpeded consecutively and only for one term. In this case, it is different from the election of the president of the United States, which is chosen in a two-tiered manner and by the electoral board, while Iran and the United States share the term of the presidency as well as the nomination for two consecutive terms. If the president of Iran does not get an absolute majority of the votes in the first stage, he will be elected with a relative majority in the second stage. Meanwhile, if the president of the United States does not get an absolute majority of the votes and the electors, the House of Representatives will be elected from among 3 people. Among the majority holders, one person with the highest number of votes is nominated as the president.

The method of electing the first vice president of Iran is by appointment, unlike the political system of the United States, and there is no need for a vote of confidence from the Islamic Council, but the first vice president in the United States is determined through elections.

In the United States, in addition to being the head of the executive branch, the president is also considered the head of the country, while at the head of Iran's political system is the jurist and leader, and the president is the second official position of the country. According to the constitution of the Islamic Republic of Iran, the governing institutions that have the power and management of the country are four authorities: "In the Islamic Republic of Iran, there is another governing authority that has the authority of the three powers and establishes communication and coordination between them. slow and directly holds some executive powers" (Mehrpour, 2010, 105). The president in Iran is the head of the government in a special sense, as the president in the United States has this responsibility, "He is at the top of the

pyramid of leadership power, and the three powers are his arms, each within a defined range to perform legislative and executive duties." and pays judicially" (Zamzam, 2010, 147).

The most important duties of the president in Iran are: the head of the executive branch, the responsibility for the implementation of the constitution, the drafting and approval of bylaws in relation to the duties of his area of responsibility in the executive branch, the responsibility for the budget and administrative and employment affairs of the country, signing the letter of confirmation of ambassadors and accepting Credentials of ambassadors of foreign countries, awarding government insignia, chairmanship of the Supreme National Security Council, chairmanship of the Supreme Council of Cultural Revolution, chairmanship of the Constitutional Revision Council, chairmanship of the Council of Ministers, the appointment of ministers after obtaining a vote of confidence from the parliament and their dismissal, signing important international agreements . The president in Iran, unlike his counterpart in the United States, has the authority to initiate the proposal of law to the legislature, according to the seventy-fourth article, legal bills are submitted to the parliament after the approval of the council of ministers. Also, the president in Iran, unlike the president in the United States, does not have the authority to veto the laws passed by the parliament, and based on the one hundred and twenty-third principle, he is obliged to sign and implement the resolutions of the parliament or the result of the referendum after going through legal procedures and being notified to him. Give it to the authorities.

The president of Iran does not have much influence in the judiciary, apart from influencing the annual approved budget of that branch and the judicial bills sent to the parliament that pass through the cabinet, while in the United States, as stated, the members of the Federal Supreme Court are chosen by the president. And are installed. Due to the two pillars of the executive branch in Iran, the president is deprived of commanding the armed forces and declaring war and peace, and this responsibility is assigned to the leadership based on clauses 4 and 5 of the 111th principle, while the executive branch has one pillar. In the United States, this responsibility rests with the president.

3.2.3 Legislature

Legislature is an institution that is responsible for legislation in a country. If we pay close attention to the goals of legislation, the necessity of the legislative body becomes clearer. Usually, the explanation of rights and obligations and the provision of justice and security are considered as the main goals of law and legislation. In this regard, the late professor Omid Zanjani believes that "the most important duty of the law is to pave the way and pave the way for human growth and excellence" (Omid Zanjani, 1987, 142).

The legislature is a council institution, the constitutions of countries have given this institution the authority to propose, approve and approve laws and supervise their implementation. The formation of the legislative branch has been practiced in different ways throughout history, including hereditary, appointed and elective, the latter method is currently the most common in the world, based on which elected representatives of the people become members of legislative assemblies. The number of legislatures varies in countries. Today, most of the

countries in the world have two parliaments and some have a single parliament, and each of these two has its supporters. Winter, a German thinker, considers this parliament to be "the wisdom of the country". (Hashmi, 2011, 262) Parliament is also the embodiment of the legislative branch of a country. The federal parliament in the United States of America is called Congress, which is composed of two houses, namely the House of Representatives and the Senate, according to the first principle of the constitution.

The number of representatives in the House of Representatives is determined in proportion to the population of the United States, while in the Senate, each state, whether large or small, large or small, has two representatives (Senators). Legislation is the exclusive jurisdiction of Congress. The legislative powers of the parliaments are almost equal. This equality is respected in all cases except for the right of initiative (plan) in the field of financial and tax laws. Check and correct the approved representatives in the field of financial and tax issues. Despite the legislature's efforts in equal distribution of power between the two chambers, the bottom of the scale weighs heavily in favor of the Senate "This has been to highlight the federal virtue of the United States of America government and the participation of the representatives of the member states in the most sensitive decisions of the central government." (Qazi Shariat Panahi, 2005, 185).

The members of the House of Representatives are elected directly by the people's vote and single-name and majority and one-stage for 2 years, and the members of the Senate are also elected by direct vote and in one-stage and majority. The activity of the Congress is almost permanent. Congressional deliberations mainly revolve around the passage of laws. There are different commissions and factions in each of the above two parliaments. Commissions play a decisive role in the legislative process. Factions are composed of representatives and senators belonging to one party. Factions play an important role in running the parliament. The leaders of the factions are the most important figures of the Congress after the speaker and the president of the Senate. There are two conditions in the legislation of the Congress, one is not to conflict with the fundamental rights and freedoms of the people and the other is not to conflict with the jurisdiction of the states. In addition to the powers mentioned in the constitution, Congress has the authority to levy taxes, issue bills, and declare war and peace... It has implicit powers that can understand the intention and will of the legislator from the meaning and meaning of the words and circumstances, for example: the right to enact laws regarding the establishment of the central bank by appealing to known and explicit authorities such as the issuance of banknotes and financial affairs and etc.

In addition to explicit and implicit powers, the Congress also has other powers that are necessary, that is, "the result of the effect of some powers that are mentioned in the Constitution or that are connected with the totality of its principles, which are called "unnecessary" powers. Determining the implementation guarantee for the rules that are established is one of these types of powers" (Ibid, 159). Also, despite the lack of provisions in the constitution, Congress has enacted legislation under the title of "emergency powers" in critical situations such as war and economic crisis, such as regulations on the rationing of rare materials. Congress also has mandatory authority, in these cases, Congress is obliged to implement them. For example,

every ten years, the Congress should have a procedure for the population census and reconsider the number of seats of each state in the House of Representatives based on their results.

As mentioned, legislation is the right and competence of the members of Congress and includes its initiative, review and approval. For this reason, legal proposals must be approved in both parliaments, and in case of disagreement, the "conciliation commission" (Ibid, 160) elected in the parliament resolves the dispute; otherwise, the said proposal remains abandoned until a new legislative parliament is formed. Although the inherent competence of Congress is legislation, it also has powers in other areas. In the jurisdiction of Congress, it can prosecute and prosecute the president, his vice president, and high-ranking federal officials on charges of treason, corruption, bribery, and other crimes. Put in addition to legislation, Congress also has regulatory powers. Such as investigation through the permanent commission and commissions related to the investigation. Also, Congress cannot approve some proposed budget codes and required appropriations or impose its opinions through indirect supervision. Another monitoring case is the possibility of revoking executive regulations by Congress, in this case, these types of regulations can be revoked with a simple majority.

As mentioned, legislation is the right and competence of the members of Congress and includes its initiative, review and approval. For this reason, legal proposals must be approved in both parliaments, and in case of disagreement, the "conciliation commission" (Ibid, 160) elected in the parliament resolves the dispute; otherwise, the said proposal remains abandoned until a new legislative parliament is formed. Although the inherent competence of Congress is legislation, it also has powers in other areas. In the jurisdiction of Congress, it can prosecute and prosecute the president, his vice president, and high-ranking federal officials on charges of treason, corruption, bribery, and other crimes. Put in addition to legislation, Congress also has regulatory powers. Such as investigation through the permanent commission and commissions related to the investigation. Also, Congress cannot approve some proposed budget codes and required appropriations or impose its opinions through indirect supervision. Another monitoring case is the possibility of revoking executive regulations by Congress, in this case, these types of regulations can be revoked with a simple majority.

Congress also has selective powers, such as electing the president and his deputy who could not obtain the necessary majority in the national elections, in this case, the House of Representatives and the Senate appoint one of the three majority holders and two first vice presidents, respectively. They elect the president and another to the position of vice president. In addition, in case of the death or resignation of the first vice president, the selection of his successor is done with the proposal of the president and the approval of the Congress.

Congress has the authority to establish and prescribe. The authority to establish is related to the revision of the Constitution. In this regard, Congress has both the right to take the initiative in the revision and to determine the composition of the competent body of the states for final approval. In its prescriptive powers, Congress can prescribe and issue declarations of war and military action abroad. The consultation of the President with the Congress and the obligation of the President to submit a report to this legislative body is done by the law approved in 1793

under the title "War Powers Act" and if military operations take place abroad and the Congress within sixty days do not prescribe that the president is obliged to end it.

Another point that needs to be stated in this section is that both parliaments, in addition to their common duties, which are mainly legislation, have their own exclusive competence, for example, some appointments by the president, such as ambassadors and judges of the Supreme Court, must be approved by the Senate. In the field of foreign policy and international relations, ratifying treaties is one of the special powers of the Senate. In the same way, the House of Representatives can choose one person from among the three people who have the most votes and nominate as the president if any of the candidates do not get the necessary majority in the presidential election.

With this description of the principle of absolute separation of powers, but the above materials show that the cooperation between the legislative and executive branches is inevitable, and in the constitution and customary rules, there are cases of cooperation and relations between the two, some of which were mentioned. In any case, in the American legal and political system, the lives of the executive and legislative branches do not depend on each other, and each of them is formed according to the constitution and performs its special work, but due to practical problems, cases of cooperation by The constitution has been identified, which are mentioned under the title of tools and powers of the powers against each other, such as the right to veto the laws passed by the Congress by the President or the right to prosecute and try the President and other executive branch officials by the Congress.

The legislature in the states also has its own characteristics. The Constitution of the United States of America provides for the system of absolute segregation for the states of this country, and the legislature of 49 states is bicameral, except for the state of Nebraska. The term of membership of the representatives in both houses is in most cases similar to that in the federal houses. In the states, it is possible to initiate the law by the people and hold a referendum, and dozens of referendums are held every year. The legislative assemblies of the states have complete and absolute authority in the matter of legislation, unless they are explicitly prohibited by the federal constitution.

In the Constitution of the Islamic Republic of Iran, the legislative system is foreseen as a unicameral system, and the members of the parliament are elected for a period of 4 years through elections with direct majority vote. The Islamic Council of Iran has two important tasks: legislation and supervision.

Based on the seventy-first principle, the Islamic Council legislates laws on general issues within the limits stipulated in the constitution. However, this general authority of the parliament has been allocated in cases such as the law related to the number and conditions of experts, the issue of the one hundred and eighth principle, and the regulations related to the complex of determining the quality of the system of regulations and approval letters of the council of ministers and ministers.

In addition to general authority, the legislative branch in Iran also has special authority, for example, the approval of the annual budget of the entire country is the subject of Article 52 of the Constitution of this type of exclusive authority.

In Iran's constitutional law, the legislative initiative is not only in the hands of the Islamic Council, but the representatives of the executive branch, the judiciary and the Supreme Council of the Provinces have the right to propose a law. According to Article 74 of the Constitution, the members of the parliament can, if signed by at least 15 representatives. Propose a law. One of the duties of the Head of the Judiciary in Article 158, Clause 2 is to prepare judicial bills.

The authority for approving these bills is the Islamic Council, and based on Article 122 of the Constitution, the Supreme Council of Provinces has the right to prepare plans within its duties and propose them directly to the Islamic Council through the government.

The legislative power in the Islamic Republic of Iran has two pillars, the first pillar is the Islamic Council and the second pillar is the Guardian Council. According to the ninety-third article, the Islamic Council has no legal validity without the existence of the Guardian Council, except in the case of approving the credentials of the representatives and electing six legal experts of the Guardian Council.

Considering that the general policies of the system are determined and announced by the leadership after consulting with the Assembly for the Expediency of the System, and the supervision of these policies is also under the authority of this institution based on the delegation of the leadership to the Assembly, it seems that the Assembly indirectly He is present in the legislation and supervision of the implementation of the approved laws that are approved by the leadership. In this case, the approvals of the parliament should not be contrary to Sharia and the constitution, nor should they be contrary to the general policies of the system.

Contrary to the political system of the United States, where state laws govern the elections of federal and state representatives, in Iran's legal system, laws related to the elections of the Islamic Council and other elections, except for the elections related to experts in the Islamic Council, are approved and implemented, and the above law He oversees and governs all provinces, cities and parts of the country.

The Islamic Consultative Assembly examines its plans and bills first in its internal commissions and then presents them on the floor of the parliament. In addition to the permanent internal commissions, the Islamic Consultative Assembly has special commissions as well as research and investigation commissions. Based on the seventy-sixth principle, the Islamic Council has the right to investigate all the affairs of the country.

In addition to commissions, various factions are formed by the majority and minority parties in the Islamic Council. These factions play a very important role in guiding the public opinion of the parliament in approving and rejecting proposals.

The Islamic Council has a heavy weight compared to the executive branch due to its mandated powers in the constitution, and the tools and powers of this institution are significant compared to the executive branch, some of which are mentioned below.

- Approving the country's annual budget and subtracting it.
- Approval of bills proposed by the executive branch.
- Vote of confidence in the ministers proposed by the president.
- Questioning and impeachment of ministers and the president.
- Research and investigation by the executive branch.
- Checking the non-contradiction of the by-laws and regulations approved by the executive branch through the speaker of the parliament.
- Approval of international covenants, agreements, contracts and agreements by the Islamic Council.
- Approving the license to hire foreign experts in cases of necessity.
- Approving the sale of nationally beautiful buildings and government property with the approval of the Islamic Council.
- Approval of receipt and payment of domestic and foreign grants.
- The vote on the political incompetence of the president and the request for his dismissal.
- Pursuing legal violations of the president and ministers through the commission of Article 90 of the parliament and sending it to the judiciary.
- Membership of MPs in some councils and commissions in the executive branch, such as the press supervision board.
- Identifying the urgency and non-urgency of the bills sent by the executive branch to the parliament.
- Recognizing and approving requests for private meetings by the president or any of the ministers.

The above cases are important examples of the regulatory and legal powers and tools of the legislative branch in the executive branch. However, despite the above-mentioned powers, the executive branch and the president also have different tools, such as the formulation of independent executive regulations, which He can include his point of view in such regulations or in the submitted bills? Usually, due to the wide technical and specialized area of the executive branch, most of these bills are approved in the parliament. With this description, the level of influence of the Iranian legislature on the executive branch is still high and the weight of the parliament is heavier than the executive branch. It has wide powers and has more independence, while each of them has special facilities and tools to influence.

In Iran's legal system, the approvals of the parliament should not be contrary to Sharia, the constitution and the general policies of the system. The authority for determining it is the Guardian Council and the Expediency Council. Of course, the non-contradiction of the parliament's approvals with the general policies of the system does not exist in the constitution,

but the interpretation of the Guardian Council on the non-contradiction of these approvals with the general policies is valid.

Another point that can be seen in the political and legal system of Iran according to the amended constitution of 1989 is the formation of the Expediency Council. The philosophy behind the establishment of this institution was the difference between the Guardian Council and the Islamic Council in some of the resolutions, "the certainty and sovereignty of the Guardian Council's opinion regarding the recognition of the conflict or non-conflict of the resolutions of the Council with the standards of Sharia and the Constitution, in front of the Council, by approving Article 112, amendment The constitution was shaken in 1989" (Mehrpour, 2010, 242). In this way, it can be said that the non-approval of the Parliament's approvals by the Guardian Council is not final, but may be referred to the Assembly for Expediency due to the insistence of the Assembly, in this case, the final opinion will be the opinion of the Assembly for determining the expediency of the system.

Another point that is not visible in the Iranian constitution is the role of the parliament in declaring war and peace. On the contrary, as mentioned earlier, the Congress has the "War Powers Law" approved in 1973.

3.2.4 Judiciary

In the system of separation of powers, the judiciary is very important because of the duty of defending the individual and social rights of the people and the responsibility of realizing justice and security. For this reason, the legislator's effort is to preserve the independence of this institution. In the political system of the United States, this branch has a significant position due to the aforementioned duties and monitoring the implementation of laws.

Although the principle of separation of powers is accepted in the political system of the United States, the Supreme Court of the United States of America is at the top of the judiciary triangle, whose members are appointed by the president and approved by the legislature (Senate).

The Supreme Court consists of nine judges and one of them is elected as the President of the Supreme Court. The establishment of the judiciary and the Supreme Court is based on Article (1) of the third principle of the Constitution: "The judicial power of the United States shall be vested in the Supreme Court and such courts as the Congress shall establish".

All claims arising out of the Constitution, federal laws and international treaties, claims involving representatives of foreign countries, claims in maritime and admiralty jurisdiction, claims in which the United States is a party, interstate claims, claims between a States and citizens of other states, lawsuits between citizens of different states, and lawsuits between a state or its citizens with countries, citizens, and foreign nationals are within the jurisdiction of the federal judiciary. There are district courts throughout the country, a district court of appeals in many local centres, and a state Supreme Court in the capital, each of the fifty states has a separate state court system.

The question is, considering that the members of the Supreme Court are chosen by the President and the Supreme Assembly, how can the independence of the Court be maintained? One of the

professors of public law believes in this regard: "The independence of the judiciary depends on the non-dismissal and transferability of judges and the validity of judicial decisions issued by them." (Abbasi, 2008, 353) This causes that: "members of the Federal Supreme Court are removed from their positions only by declaring a crime against them and convicting them." (Mireshkari, 2010, 30)

Currently, the Supreme Court of the United States is the only authority to interpret the Constitution and is responsible for monitoring its strict implementation. In addition, the Supreme Court has the authority to declare a crime against the president. In this case, the impeachment proceedings of the president will proceed in the Congress. The supervision of the non-contradiction of the Congress's resolutions with the Constitution is the responsibility of the Supreme Court. The judicial system of the United States of America is formed in the form of a pyramid, with the Supreme Court at the top, the Court of Appeals at the middle stage, and the District Court at the first stage. The same pyramid system is established in each of the states" (same) The noteworthy point is that judges in the federal government are appointed by appointment, but a large number of states are appointed by election.

The formal recognition of the independent judiciary in Iran's legal system is based on the fifty-seventh article of the constitution. In addition, in the 156th principle, in the special chapter of the judiciary, the protection and support of individual and social rights and the realization of justice are among the main duties and goals of this branch. "The independence of the judiciary comes from the competence and original values governing the judicial system. Islam attaches the highest value and importance to the issue of judging people's rights and the establishment of social justice and considers it a great trust" (Omid Zanjani, 1987, 347).

In the system of the Islamic Republic of Iran, it has been tried to implement the judicial system based on the perception of the Islamic judicial system. At the same time, "the skeleton of the judicial organization is still formed by the organizational and procedural regulations before the revolution, which are mainly adapted from Western countries" (Mehrpour, 2009, 340). Considering the importance of judiciary in Islam, the constitution has been exposed to this issue with special authority and precision. In the introduction of the constitution, it is stated: "The issue of justice in relation to protecting people's rights in the line of Islamic movement is vital in order to prevent local deviations within the Islamic" (Hosseini Nik, 2012, 27).

According to the 61st principle, the judiciary is exercised by the courts of justice, which must be established according to Islamic standards and settle lawsuits, protect public rights, expand and implement justice, and establish divine limits. Considering the mentioned sensitivities, especially because it is related to the rights of the people, the judicial system of Iran is engineered and designed in such a way that it is not under the influence of the executive and legislative branches in the management, decision-making and management of affairs. (Mehrpur, 2010, 341)

The appointment and removal of the head of the Judiciary is a leadership position. In other words, in Iran, unlike the political and legal system of the United States, the highest authority of the judiciary is not installed by the head of the executive branch, but the leadership position

is not from the executive position mentioned in the one hundred and thirteenth principle, but from the position of the jurist and Islam of the system. appoints

At the head of the country's courts, tribunals and justices is the Supreme Court, whose president is appointed by the head of the judiciary, who must be a just mujtahid and knowledgeable about judicial affairs, for a period of 5 years. According to Article 161, "The Supreme Court of the country is established in order to monitor the correct implementation of laws in the courts and to establish the unity of judicial procedure and to carry out the responsibilities assigned to it according to the law based on the criteria determined by the head of the judiciary». (Hosseini Nik, 2013, 111)

Two important institutions in Iran's jurisdiction are working to fulfill the duties stipulated in Article 156. One is the General Inspection Organization of the country and the other is the Court of Administrative Justice. Article 174 states that the purpose of establishing the inspection organization is "the smooth flow of affairs and the correct implementation of laws in administrative institutions" (Ibid, 116). Judiciary knows based on the right of supervision. Also, in the 173rd principle, the purpose of establishing the Administrative Court of Justice has been defined as "dealing with people's complaints, grievances and objections against officials or units or government regulations and asserting their rights". which was designed for the judiciary with an emphasis on the supervision of the jurist in the constitution, it limited the sphere of influence of the legislative and executive branches and removed the influence of the above-mentioned powers on this judicial institution, and therefore it can be said that the arrangement, design and engineering of the principles It is related to the judicial system of Iran, which is different from the judicial system of the United States. At the same time, both seek to establish security and justice and protect the individual and social rights and freedoms of citizens.

In addition to the above, monitoring the non-contradiction of laws and regulations with the constitution and interpretation of the constitution, which in the political and legal system of the states is the responsibility of the Supreme Court, in Iran's legal system, this task is entrusted to the Guardian Council and outside the judicial sphere. has been However, 6 legal scholars of the Guardian Council are elected through the Head of the Judiciary and after the approval of the Islamic Council. In addition, the Administrative Court of Justice, as a judicial institution, is responsible for monitoring government by-laws and regulations that are contrary to the rules. In this case, the judiciary in Iran, like the legal system of the United States, is present in the protection of laws and regulations in various direct and indirect forms.

As an example, according to Article 172 of the Constitution, "Court judges are obliged to refrain from implementing government decrees and regulations that are contrary to Islamic laws and regulations or outside the limits of the powers of the executive branch, and anyone can revoke request such regulations from the Court of Administrative Justice" (Ibid, 114).

Another important point in Iran's judiciary is that the Minister of Justice is included in the collection of the President's associates, who is elected by the President through the proposal of the Head of the Judiciary and introduced to the Parliament to obtain a vote of confidence. The

presence of the Minister of Justice in the executive branch is a bridge between the executive branch and the judiciary, although the role of the minister of justice is mostly administrative and financial, but this can make the communication and interaction of the branches more colorful.

One of the issues that has been considered in the constitution is dealing with legal violations of the president. According to the constitution, there is no special reference for the trial of the president, his ministers and his deputies. In this regard, Article 140 of the Constitution, the authority to deal with the accusations of the above-mentioned officials is considered by the public courts of justice with the notification of the Islamic Council, while citing Article 110, Article 10 of the Constitution, the removal of the president by the leadership after the Supreme Court's ruling On his violation of legal duties, it shows the presence of the judiciary in the executive field.

4- The rights of the nation

As mentioned before in the topic of governance, the government in America is based on social contract and the result of the will of the people. Democracy is realized by believing in the principle of "people's sovereignty and the limitation of the government's powers". This general belief, which is widely spread in the world, and its content is that the agreement and consensus of individuals and the summary of the "social contract" of the government, and therefore the government is subject to the public will on the one hand, and its logical and natural result is limited And the government's powers are limited to what is explicitly delegated to it, and on the other hand, it forms the basis of the relationship between the society and the government in the United States of America, and this is also mentioned in the preamble of the Constitution:

"We the people of the United States of America ... establish this constitution for the United States" (Constitution of the United States of America, Islamic Council Research Center Rx.Maklis.Ir). Also, according to the 10th Amendment of the Constitution: "The powers delegated to the United States by the Constitution and not prohibited by the States shall belong to the States or the people respectively" (Ibid). In this way, it can be said that democracy is one of the three foundations of the United States' constitutional rights, along with federalism and the separation of powers system. People's governments emerge and emerge with the initiative and participation of the people directly or through the mediation of the administration of society's affairs.

The founders of America tried as much as possible in the declaration of independence of the United States of America and also in the constitutional document to design the new government system in such a way as to prevent an individual or a group from gaining power. and do not allow the individual and social freedoms of citizens to be violated. These principles were manifested in the legal charter.

Bill of Rights or US Bill of Rights is an amendment added to the US Constitution. These amendments limited the power of the federal government and guaranteed the rights of US citizens after the Battle of America. The founders of the United States at that time, with the aim of protecting individual liberties and limiting the power of autocracy, added ten

amendments to the constitution of the newly founded country, which became known as the Bill of Rights. The American constitution is closed with logic and accuracy, in contrast to the usefulness and speed of government actions, attention has been paid to security and freedoms and its protection.

The administration of the country is done by the people's vote and opinion through direct, indirect and semi-direct democracy (referendum) by electing the representatives of the parliament and the president, and the people in the 50 states of the United States, local executives such as the governor and their legislatures with They are elected by direct vote, and in a large number of states, judges are also elected by public opinion. In some states, dozens of referendums are held every year. The presidential system in the states is also accepted through the absolute separation of powers.

The powers of the governors of some states are greater than the powers of the US president. Although there is no mention of the party in the constitution, the political arena of America has always been the scene of the activities of the big parties. The United States has a two-party system, and the two largest parties are the Democratic and Republican parties. Of course, other parties are also active in this country, which are not considered due to the lack of influence in its political life. "The party in America, on the opposite side of the centers of thought, which has a role, even if it is not essential, in the politics of the United States of America, is a mechanism of the purely electoral process, which is especially important during the elections and becomes a state of confusion in the periods between them. (Shah Mohammadi, 2009, 17). The founders of the American Constitution were opposed to the institution of political parties. George Washington pointed out the harmful effect of party spirit on the work of democratic governments. Other American leaders also denounced political parties as the main source of political and social distress and weakness, therefore, "the party system in America had an unofficial growth" (Qassemi, 2006, 113).

In the United States of America, the phenomenon of pressure groups and stakeholders are very important. "Their intervention in the world of politics is to defend and facilitate their main activity, and often this intervention is not done openly" (Harisnejad, 2010, 172). Stakeholder groups do not take sides in important political issues, except in exceptional cases, they avoid aligning themselves with one of the two major parties.

One of the important differences between the political and legal system of the United States and the political and legal system of the Islamic Republic is that the legal and political system of each of these countries is designed and engineered based on the worldview and values and beliefs of the aforementioned societies. The type of view and interpretation of the individual and society is different in each of these two systems. Religious and non-religious approaches, God-centered and human-centered, each pursues its own effects and requires its own mechanisms. This fundamental difference in understanding the concepts and examples of human rights also makes the fundamental rights different, although it is possible to see a common point of view in some of the above topics, but still there are differences in concepts such as freedom and... due to the type of materialistic worldview. And God is evident. However, just as in the political system of the United States, democracy, federalism and the

principle of separation of powers are part of the three important principles of this political regime, in the political and legal system of the Islamic Republic, republicanism and Islamism are considered important principles, and therefore the political and legal structure of the Islamic Republic Iran cannot be analyzed and compared without Islam. Without a doubt, the rights that are defined in the third chapter of the constitution under the title of nation's rights are primarily based on religious and Islamic values, if we consider the most important basic rights and freedoms to be equality, security, freedom, the right to sue, and the right to self-determination. It can be said that these rights, while being expressed by the universal human rights declarations, are rooted in Islamic religious and jurisprudential texts. Of course, the human-made institutions that were established in order to establish and protect these rights and do not conflict with Islam have always been approved.

With this description, in the view of the Constitution of the Islamic Republic of Iran, man is God's successor on earth and the ruler of his own destiny, and no one can take away this divine right from man or serve the interests of a particular individual or group. Also, in the first principle, which we consider to be the most important manifestation of this divine right, we can observe the republican system. The constitution, with these and other principles, each of which has a delicate and special connection with each other, has been able to beautifully outline the position of the nation and their rights and role in the administration of the country. The sixth principle of the constitution is another related principle. This principle is the manifestation of the republic and the sovereignty of the people in all eras and generations. In this principle, it is emphasized that the affairs of the country should be governed by relying on public votes through elections, electing the president, representatives. Majlis, Islamic Council, members of councils, etc. or through a referendum.

It seems that in the legal and political system of the Islamic Republic, like the political system of the United States, the people are sovereign in determining their own destiny, and they have the right to choose a religious or non-religious system, but if they accept a religious system, they also accept its accessories, as in all Persi in 1979 accepted republicanism and Islam together and voted for the constitution, at the head of which a legal guardian is elected with specific powers and duties through indirect elections. In the legal and political system of the Islamic Republic of Iran, like the regime of the United States, the election system is accepted, and various elections are held to exercise the right of sovereignty in the country after the end of the term.

In Iran's political and legal system, like the United States, indirect democracy or representative system is accepted, and the people's representatives are elected by their direct votes for various positions such as the Legislative Assembly, the presidency, the Islamic councils of cities and villages, and leadership experts. Semi-direct democracy (referendum) is also accepted, but there is no indirect democracy initiated by the people, so it means semi-direct democracy initiated by the government or referendum. which the constitution has mentioned in the fifty-ninth and one hundred and seventy-sixth principles.

Contrary to the political and legal system of the United States, which officially does not mention the party in its constitution, the political and legal system of the Islamic Republic of

Iran is recognized in the twenty-sixth principle. The third chapter of the Iranian constitution can be considered as one of the most brilliant chapters of the constitutional law, during which it has paid attention to the human rights of all citizens, while the fourth article of the constitution beautifully expresses the criticism of the government and the government based on the principle of enjoining what is good and forbidding what is evil. has done, in this case, it is not possible to remain silent by observing the deviation of the agents due to expediency, and therefore, based on this principle, it is a Shari'i duty to express the deviations. This importance is not seen in other political systems, especially the United States of America.

Result

1- The Constitution of the United States of America was established after the independence of this country from England, and therefore it is not considered a constitution of granting and ordering. The Constitution of the Islamic Republic was also created after the victory of the Islamic Revolution and is not considered a granted or mandated constitution. It is stated in the preamble of the United States Constitution that we, the people of the United States, establish and establish this Constitution for the United States of America. The Constitution of the Islamic Republic of Iran also considers the Constitution as a reflection of the previous will of the Islamic in its preamble. In the first principle, which has a founding principle compared to other principles. The founder of the constitution and the type of government (Islamic Republic) is considered by the people of Iran, who, based on their long-standing belief in the rule of justice and justice of the Qur'an, voted for it by participating in the referendum after the Islamic Revolution. In addition, the Constitution of the Islamic Republic of Iran, like the United States and many countries in the world, is at the top of other laws in terms of hierarchy, and all normal laws and regulations and government regulations must not contradict the principles of the Constitution.

The US Constitution is considered one of the inflexible (hard) constitutions. The Constitution of the Islamic Republic of Iran, like the above-mentioned law, is an inflexible (hard) constitution, and revising it requires relatively heavy formalities, but the executive mechanisms for revising these two constitutions are different.

2- The government in the legal system of the United States is based on public will, and as mentioned earlier in the introduction and the first principle of the Islamic Republic Constitution, the determination of the type of political system (Islamic Republic) and the establishment of the constitution based on the vote and will of the people have been realized. As in the United States, it has been achieved by public will. Although the constitution of Iran does not explicitly state that sovereignty belongs to the nation, but by studying the preamble and various principles of the constitution, the role of the people and public will in governance and the creation of political and public institutions can be achieved. In this regard, it is stated in principle 56 that the absolute sovereignty over the world and man belongs to God, and He has made man the ruler over his social destiny, and no one can take away this divine right from him or serve the interests of an individual or a group. and the nation applies this God-given right from the side that comes in the following principles.

The sixth and seventh principles, fifty-eighth, one hundred and fourteenth, and one hundred and seventh principles are examples of the principles of the constitution that refer to the role and will of the public. Therefore, the constitution of the Islamic Republic of Iran, similar to the constitution of the United States, the vote of the people plays a fundamental role in its governance, creation, continuation and administration, but the constitution of Iran has delicately placed all this public will during the divine will, and while this is important in the system US legal is not visible.

3- The form of country administration in Iran, unlike the United States, which is a federalism system with political decentralization, is a simple system based on decentralization and decentralization, and apart from the Islamic councils of cities and villages, which operate in a decentralization system, and the government is based on They have guardianship supervision and their powers are more administrative and financial. In other matters, lack of concentration and hierarchical supervision prevails, while in the American political system there is political decentralization and the federal member states, except for the powers that are given by the special federal constitution. They have other powers in general and enjoy political, administrative and financial autonomy in their states, but in the political system of Iran, the provinces and cities of the country do not have such powers, and local authorities (except for local councils) are outside the center of determination. be.

4- The separation of powers in the United States is an absolute separation, and the political and legal system of this country is considered one of the presidential systems in common classifications, while the separation of powers system in Iran is a relative separation of powers and one of the semi-presidential-semi-parliamentary systems. Placed. In addition to being directly elected by the people's vote, the president has political responsibility in front of the parliament, and the parliament can supervise him and question and impeach him and declare his inadequacy, as well as the ministers in this system of separation of powers. They get a vote of confidence from the parliament and the parliament can also dismiss them, but in the legal A) At the head of the judiciary of the United States is the Federal Supreme Court and its members are chosen by the president, while at the head of Iran's judicial system is the leadership and then the head of the judiciary, who is appointed by the leadership.

b) Supervision of the non-contradiction of laws with the Constitution in the United States is with the Supreme Court and this supervision is considered a judicial supervision, while the supervision of the non-contradiction of laws with the Constitution in the Islamic Republic is a special (political) guardian and through the Guardian Council. It is done that its members are elected through leadership, judiciary and parliament.

c) The interpretation of the Constitution in the legal system of the United States is the responsibility of the Supreme Court and this interpretation is done in the jurisdiction, while the interpretation of the Constitution in the Iranian legal system is the responsibility of the Guardian Council as the second pillar of the legislative branch based on Article 98.

6- In the political legal system of the Islamic Republic, as in the United States, elections are one of the most important forms of political participation in which people choose their

representatives through voting, but at the same time, there are differences, the most important of which are as follows:

A) Due to the fact that the form of government in the United States is federalism and in Iran it is simple, the elections of local officials are not held in Iran except for the Islamic councils of cities and villages, but in the United States, local and even judicial officials are elected through elections.

b) The election of the president in the United States is done in a two-tiered manner by the people and the electorate, and in Iran in a direct and one-tiered manner by the people.

c) Considering that Iran's political system is unicameral, elections in Iran are held for only one parliament, while in the United States, elections are held to determine the representatives of two parliaments (the House of Representatives and the Senate).

d) Election monitoring is different in the United States and Iran. For example, the monitoring of the House of Representatives and Senate elections is done by the House of Representatives and the Senate, while in Iran this monitoring is done by the Guardian Council.

f) In America, many referendums are held in the states, while in the political and legal system of Iran, such a system is not foreseen for the provinces and cities of the country, and apart from the legislative referendum and the basic referendum, there is no such local referendum. system and separation of powers of the United States, the president and ministers do not have such responsibility. In addition to that, at the top of the separation system of the three Iranian powers is the leadership and legal guardian, who plays the role of the adjusting power with legislative, judicial and executive supervision and guidance.

v) In Iran's legal system, the judiciary is defined as one of the three independent powers, like the United States, but they also have differences as follows:

7- The most important basic legal source in the United States is the Constitution. In the Islamic Republic of Iran, the Constitution is also considered as a general and main source, but next to it there is a special source called Sharia rules and regulations. Like the American political system, Iran's political system is a part of democratic systems, but like the United States, democracy in Iran does not constitute the full content of Iran's laws, but the desired democracy is religious democracy based on religious and school values, which rights and freedoms It has respected individual and social rights according to the inherent dignity of human beings, and it has not been defined in various principles under the title of the rights of the nation.

References

- Abbasi (Lahiji), Bijan, (2009), Tehran, "Fundamentals of Constitutional Rights", Jungle Publications, first edition.
- Akbari Karimabadi, Nooruddin, (2013), Tehran, "The position and role of the American House of Representatives in the political system of this country", report magazine, number 66.
- El Medex, Robert, Torabi, Seyyed Moqdad, (2006), Tehran, "Basic Laws of World Countries", Institute of Legal Studies and Research.

- Ghasemi, Mustafa, (2016), "Looking at the activities of parties", Religion and Politics Quarterly (Insan Research Journal), number 10, winter period.
- Harisinejad, Kamaluddin, (2018), Tabriz, "Comparative Basic Laws", Aydin and Yanar Publications, 9th edition.
- Hashemi, Seyyed Mohammad, (2018), Tehran, "Constitutional Rights and Political Structures", Mizan Publications, first edition.
- Hosseini Nik, Seyyed Abbas, (2012), Tehran, "Constitutional Law", 21st edition.
- Islamic Council Research Center - Rc.Majlid.Ir
- Khosravi, Hassan, (2018), Tehran, "Basic Rights 1", Payam Noor University Publications.
- Mehrpour, Hossein, (2010), Tehran, "Summary of the Basic Laws of the Islamic Republic of Iran", Justice Institute Publications, second edition.
- Melli, Sahar, Mirini, Seyyed Qasim, "Attitude towards the independence of the legislature in interaction with the political institutions governing the Islamic Republic of Iran", Qonun Yar legal researches, first period, autumn, number 3.
- Mirshkari, Abbas, (2013), "Studies of the Supreme Court in the American Judicial System", Judiciary Monthly, No. 70, June and July.
- Omid Zanjani, Abbas Ali, (1987), Tehran, "Political Jurisprudence - Fundamental Rights and Basic Principles of the Islamic Republic of Iran", Amirkabir Publications, first edition.
- Qazi Shariat Panahi, Seyyedaboulfazl, (2004), "Requirements of Basic Rights", Mizan Publishing House, twenty-fourth edition.
- Saadat, Samadi, (2015), "Explanation of the foundations of legitimacy and its basis in the Iranian Constitution", Legal Scholars Quarterly, 4th year, 8th issue.
- Shabani, Qasim, (2008), Tehran, "Constitutional rights and government structure of the Islamic Republic of Iran", Information Publications, 37th edition.
- Shah Mohammadi, Parisa, (2008), "The role of parties and centers of thought in government policy-making in America", Events and Analysis, November, No. 237.
- Sheikh Al-Wakalai, Mahmoud, (1966), "American Constitution", Judicial Quarterly, Year 13, Number 8.
- Tabatabai Motmani, Manouchehr, (2015), Tehran, "Fundamental Laws", Mizan Publishing House, 16th edition.
- Zamzam, Alireza, (2017), "Comparative study of the model of distribution of power in Iranian and American laws", Political Science Quarterly of Baqer Uloom University, Issue 4, Number 55.
- Zarei, Mohammad Hossein, Rezaizadeh, Maleeha, (2018), Tehran, "Local Governments in Federal and Unified Countries", Journal of Legal Research, No. 6, Autumn Period.