



THE COMPETENT AUTHORITY TO RECONSIDER ACCORDING TO THE IRAQI AND IRANIAN CONSTITUTIONS COMPARATIVE STUDY

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Article history:	Abstract:
<p>Received: 18th August 2021 Accepted: 18th September 2021 Published: 27th October 2021</p>	<p>The subject of the shrines and those responsible for reviewing the Constitution is a necessary legitimate means in various constitutional systems, accompanied by changes in different societies and at all economic, social, cultural and political levels, Hence, we find that the Constitution may be confused by some material and linguistic mistakes and the survival of these leads to the arrangement of some effects that were not intended by the Constitution, and the difference of words and meanings may lead to different terms, and the change of names leads to the different names and different terms leads to different considerations Accordingly, the iraqi constitution in force (2005) made the authorities responsible for amending the Constitution in articles (126) and (142), on the other hand, we note that the Constitution of the Islamic Republic of Iran in 1979, when discussing the draft constitution, did not The Council of Experts mentions the principle that refers in time to the way the Constitution is amended only after the 1989 amendment, Chapter 14 and the 77th Principle were enshrined in the 100th, not usually the constitution, and the establishments and forces responsible for the review were specified, and we are trying to make a comparative vision between the Iraqi and Iranian constitutions on the shrines and those responsible for reviewing the constitution.</p>
<p>Keywords: President of the Republic, Iranian constitution ,Members of the Review Board, Heads of the three authorities.</p>	

INTRODUCTION

Specialized studies in political systems and constitutional law have traditionally classified the shrines and those responsible for reviewing the Constitution, in accordance with the criterion of the status of power or the axis of the movement of the regime, so the determination of the denominators and those responsible for the amendment reveals the status of gravity they enjoy under the legal and political reality of the State, and from this idea the constitutions differ in determining this authority, as a result of the different circumstances and political factors prevailing in it, and the desire of the authority establishing the Constitution to prefer it over others, some of which go to determine the places of place. And officials by the executive branch make it the competent body to amend the Constitution, and in this it prevails over others, and other constitutions may determine the legislative authority and make it competent to amend the Constitution as representative of the people, while some constitutions create a kind of balance - albeit in a judgmental way - between the legislative and executive branches, making them the power to amend the Constitution, Given the importance enjoyed by the maqams and officials of the Constitution, the established rule in this regard requires that they be subject to a set of provisions when amending the Constitution so as not to prejudice or diminish the sovereignty of the Highness of the Constitution, and that these provisions differ from one constitution to another, but what is important is to respect the constitutional provisions when amending the Constitution.

For the purpose of searching for the shrines and those responsible for the amendment to which they are subject to the Iraqi and Iranian constitutions, this research will be divided into the assent:

The first is the maqams and those responsible for reviewing the Iraqi constitution.

Second: The denominators and those responsible for reviewing (amendment) to the Iranian Constitution.

The denominators and those responsible for reviewing (amendment) in the Iraqi constitution

Iraq has adopted the parliamentary system as one of the parliamentary systems adopted by democratic countries in accordance with the constitution in force in 2005, and the governing authorities of the state are represented by the three authorities: legislative, executive, and judicial, and begin their terms of reference and tasks on the basis of the principle of separation of powers⁽¹⁾, The Constitution regulated the work of these authorities and the relationship between them and their terms of reference in Titles IV and III of it, and since the scope of our study is based on the denominators and officials that are engaged in the process of amendment as well as the provisions specified for them, we will study the definition of these powers and their provisions according to the following:

The first requirement: to define the shrines and officials in the Iraqi constitution

This means granting the right of amendment to the important authorities of the State, which are specified by the provision of the Constitution, namely, the executive branch represented by (the President of the Republic and the Council of Ministers combined), and the legislature represented by (five (1/5) members of the House of Representatives), Article 126 of the Iraqi Constitution) It is understood from the foregoing that the Iraqi Constitution has defined the denominators and those responsible for the amendment by the executive and legislative branch, and we said when speaking in the subject of the stages of the amendment that the President of the Republic and the Council of Ministers combined submit the draft amendment, as well as submitted by the members of the House of Representatives, and in order to be informed about the subject of the executive and legislative branch, and to know these authorities and their relationship with the subject of our study, we will state this through the following two sections:

PRESIDENT OF THE REPUBLIC AND COUNCIL OF MINISTERS

A) President of the Republic

Article 67 of the Iraqi Constitution defined the President of the Republic by saying: "He is the head of state and the symbol of the unity of the nation, representing the sovereignty of the country, and ensuring compliance with the Constitution, and preserving Iraq's independence, sovereignty, unity and territorial integrity, in accordance with the provisions of the Constitution)."

Article 70 of the Constitution specified the electoral mechanism, where the House of Representatives elects the President of the Republic among the candidates and with a majority of its members, within 30 days of the date of the first meeting of the Council, and if none of the candidates obtains that majority, a second ballot will be held among the candidates with the highest votes, The president is called the one who receives the majority of votes on the second ballot, and the candidate for the presidency must meet the conditions stipulated in article 68 of the Constitution:

- 1) Iraqi by birth and from Iraqi parents.
- 2) Full eligibility and 40 years of age.
- 3) He has a good reputation and political experience and is known for his integrity, integrity, justice and loyalty to the nation.
- 4) Not convicted of an honorable crime.

B) Cabinet

The Council of Ministers is the cornerstone of the executive branch and its status because it prepares and approves the general policy of the state in the political, economic, social and security fields, as well as the issuance of laws, regulations, instructions and administrative decisions (Shabr, Rafi Khader Saleh.2012) The President of the Republic assigns the candidate of the most numerous parliamentary bloc to form the Council of Ministers within 15 days of the date of the election of the President of the Republic, and it is noteworthy that the article mentioned did not specify the most numbered parliamentary bloc, but a request was submitted to the Federal Supreme Court on 21 March 2010, including the interpretation of article (76) of the Constitution of the Republic of Iraq, and the court issued its decision that the expression ((the most numerous parliamentary bloc(<http://www.iraqfsc.iq/krarat>)

,means: The bloc, which was formed after the elections through a single electoral list, entered the elections with a specific name and number and won the most seats, or the bloc that gathered from two or more electoral lists that entered the elections with different names and numbers and then bloced into one bloc with one entity in the House of Representatives, whichever is more numerous, the President of the Republic assigns the candidate of the parliamentary bloc, whose parliamentary seats in the first session of the House of Representatives became more numerous than the bloc or blocs. the other by forming a cabinet based on the provisions of Article 76 of the Constitution, The Federal Court's opinion on the agreement was issued on 25 March 2010.

The prime minister in charge of nominating members of his ministry within 30 days of the date of the mandate, and in the event of the failure of the prime minister in charge of forming his government within the specified period, the President of the Republic assigns a new candidate for the presidency of the Council of Ministers, and the new official presents the names of his ministry, and the ministerial curriculum to the House of Representatives, and is considered to have confidence, when the ministers are approved individually, and the ministerial curriculum, by an absolute majority, and is required to The Prime Minister is required to have a university degree or its equivalent and has 35 years of age (Article 77 of the Iraqi Constitution)

Members of the House of Representatives

Based on the 2005 Iraqi Constitution, the House of Representatives consists of a number of members, representing the entire Iraqi people and elected by direct secret ballot, with one deputy for every (100,000) Iraqi population) (Article 49, paragraph I-II of the Iraqi Constitution)The number of members of the House of Representatives at present and according to the elections held on May 4, 2018, 329 members, and according to article 54 of the Constitution, it is the President of the Republic who calls on the House of Representatives to convene within the period of 15 One day after the approval of the election results, the first session will be chaired by the oldest members to elect the speaker and two deputies.

The Iraqi constitutional legislator has taken the initiative to propose amending the Constitution as a common jurisdiction between the legislative and executive branches, in the sense that the Council of Ministers and the President of the Republic have taken the initiative to propose amending the Constitution Inch, (Rafi Khader Saleh)

The denominators and those responsible for reviewing (amendment) to the Iranian Constitution

It is recognized that the Islamic system has its own status in the Iranian Constitution, and cannot be included in any of the prevailing regimes in the world, although there is an owner of the executive branch; other contemporary.

It is characterized by the fact that the authority of the leader is the central and first authority of the State, which oversees the work of the three authorities (executive, legislative, and judicial) and coordinates among themselves and formulates their higher policies, in a more precise sense that there are four powers in this system, one of which is the supreme authority and the authority of the leader, followed by the three independent authorities that cooperate among themselves and exchange control, namely the authority of the President of the Republic, the authority of parliament and the judiciary, and in fact this system is a human reflection - of the era of coma - For the imamate system in the school of the people of the house (peace be upon them), hence it is clear that the leadership system represents a new addition to the systems prevailing in the curricula of constitutional law and political systems(Dean Zanjani, Abbas Ali .1994) These constitutional institutions play a prominent role in the process of reviewing and drafting the Constitution, and the Iranian Constitution has defined the structure and powers of these institutions and defined their functions in a way that is not incompatible with each other, and in cases where these powers may conflict with them, the solution of the problem that may arise between these institutions is entrusted to the leader who resolves this issue as the highest official place in the Islamic Republic of Iran.

The definition of shrines and officials in the Iranian constitution

These are the institutions designated by the Iranian Constitution by name, to take over the process of amending the Constitution by deleting or adding other articles, represented by the leader, the expediency complex and the President of the Republic, and then the formation of a new council called (the Council for the Review of the Constitution), these three places that are mentioned are called (political institutions), and the council that is called (the legal institution for amending the Constitution), and to know these shrines and institutions briefly, we will study them through the following subs:

Section 1: Political Denominators

It is reflected in the leader, the President of the Republic, and the expediency complex, and we make the following statement:

A) Commander (Wail Al-Faqih)

The leader is considered the highest place in the Iranian political system, and is a realistic embodiment of the principle of the mandate of faqih in Jaafari jurisprudence and included in the articles (5-57- Chapter VIII of the Constitution) and has legal and constitutional powers in the administration of state affairs, in addition, the commander exercises his duties through his own office called (the office of the commander) and the office arranges the meetings of the leader and the occasions of his appearance and visit, It also includes four permanent members, all religious scholars with the degree of "Hajjah al-Islam" or "Ayatollah", as well as 10 advisers for cultural, economic, military and media affairs (Al-Obaidi, Mohammed Abdul Rahman Younis,2008)

B) President of the Republic

The President of the Republic occupies second place after the position of leader, as indicated by article 113, and we have said in the past that the President of the Republic is responsible for the executive branch represented by the Council of Ministers and the general administrative structures of each ministry, and the President of the Republic is elected among religious men who meet the conditions stipulated in article 115, and within the scope of his powers entrusted to him, which is responsible to the people and the Islamic Shura Council (Khalilian, Khalil) So it can be said that the President of the Republic is the president of the Council of Replay; There is no legal objection to not assuming the presidency based on the Iranian constitution, so council members can choose from them as president, and the president can also be chosen after a vote, and the leader can nominate someone to serve as president of the Review Council.

C) System Interest Diagnostic Complex

Imam Khomeini (His Secret Saints) founded on February 6, 1988 a body to evaluate what is in the interest of the state, and this body was called the "Expediency Complex" to decide on the dispute that may arise between the Islamic Shura Council and the Guardian Council with regard to legislative matters and to advise the leader(Bohta and Lefried. 2003) and the council consists of 31 members, They are the heads of the three forces (legislative, executive

and judicial), the jurists of the Guardian Council, a representative of the leader, the President of the Republic, and the minister who relates to the law or the contentious issue of his ministry, and the structure of the complex was expanded to include then the first assistant of the President of the Republic, the deputy of the Islamic Shura Council, and representatives of the political ministries of the country, and the commander appoints the president of the complex (Abadi, Ghazanfar.2011), In addition to deciding on the dispute between the Islamic Consultative Council and the maintenance of the Constitution, the Council exercises various functions, including (<http://www.albainah.com>)

1) Propose to review the Constitution or add other articles for the purpose of amending the Constitution in consultation with the leader.

2) Participating in the formation of the Council for the Review of the Constitution.

The function of the Complex is consultative and the decisions it submits to the commander are non-binding, and may make a different decision to the direction of the Assembly if necessary.

REVIEW BOARD

It may seem at first glance that why this subject was studied independently and not included in the stages of the amendment, because simply the composition of the Review Council is dangerous in that it is not monitored by any authority and does not control it and the Council is free to review the Constitution and the events of change and correction in the limits that come from the place of leadership, and in fact the future of this country has been thrown by people who must set the goals and objectives for the future of the system within the framework of the Constitution - within the framework of the constitution - within the framework of the constitution Known resources - this on the one hand, and on the other hand, the members of the review in terms of the necessary competences must be at the acceptable level and have sufficient practical capabilities, because it is necessary to study science in the Council and to be sufficiently familiar with the information in the field of work of the Review Board, and therefore if the previous characteristics are not available they cannot remedy the disasters that arise as a result of the negative effects of the review, and we see this necessity in reforms of legal origin and the cause of the vacuum There are many dilemmas in the Constitution, so the availability of the necessary scientific competences for the Council is indisciplinary (Montazeri, Hussein Ali .2001)

For all this, the Review Council has a feature of the characteristics that must be provided in its members, in addition to that, before it is included in article 177, the members of this Council have gone through discussions about who the members will form, whether they are moral or real persons, and we show this in the following way:

A) The characteristics of the Review Board

The discussions of the Review Council on the need for specialization to be among the professionals and those familiar with the principles of Islamic and popular law that they are urging, were emphasized when the formation of the Review Council in addition to other advantages, Here are the topics below:

1) Members of the Review Board must be professionals:

The nature of the Constitution always brings with it the correct expectation that the review by experts to ascertain the importance and highness of this legal standard, and that the purpose of the formation of a review council of officials working in the important institutions in the country and the main implementers of the Constitution are those who are directly linked to the principles of the Constitution, and these people are the most appropriate people to identify and identify the shortcomings of the Constitution and identify solutions and provide what is best for them, and the proposal to make the formation of the review council competent in the presence of Experts of common law and constitutional law increased their number from 3 to 5 provided that some of them were made constitutional law experts, but this proposal was vetoed and not approved (Shaurai Paznkry Act)

2) Members of the Review Council should be Islamic experts:

One of the proposals put forward in the review council's deliberations was that the majority of the members who voted for them should be Islamic experts so that Islamic content is one of the principles that does not change and is always safe (Shaurai Paznkry Act)

3) The members of the Review Council should be from the people:

In systems based on democracy and the sovereignty of the people, it is usually the founding force of the people and they exercise it through their representatives, and according to this idea, the institution charged with reviewing the Constitution is created by the will of the people, and it is necessary to give a special place to the people and representatives in the Review Council (Khalili, Mohsen).

4) Review Board from the perspective of member intervention:

One of the issues raised in the Council in 1989 was related to the mechanism of the composition of the Council on persons entitled to attend, for example as a member of the Guardian Council and a permanent member of the Expediency Council, i.e. whether they are permanently present or temporary and of course this issue has not received due attention, and later it is taken into account that the person who grows to constitutional institutions of different names is a member of the Council, and also that the ordinary law that It will be issued by the Islamic Consultative Council that determines the conditions to be met as well as the characteristics and characteristics)(Najafi Asfad, Morteza and Mohseni, Farid .2007)

B) Members of the Review Board:

Article 177 of the Constitution, in paragraphs 1 to 9 of the Council, specified the procedure, the quality and conditions of the election to the ordinary law, and the Council is made up of the following human rights figures:

1) Members of the Guardian Council

All members of the Guardian of the Constitution, i.e. the six jurists in Islamic law and the six jurists in terms of competence and implementation, are entitled to attend the Review Council, because the doctrinal and legal specialization is one of the necessary jurisdictions in the work of the Review Council, yet the specialized right of the members of the Maintenance Council to interpret the Constitution; The diagnosis of this rests with the guardian of the Constitution (<https://www.shora-gc.ir>)

It should be noted that the maintenance of the Constitution at the beginning of the members of the Review Council and their progress on the heads of the three authorities, as evidence that the Constitution has a direct relationship with the functions and responsibility of the guardian of the Constitution in terms of knowledge and interpretation provided on the executive power of the presidency specified in the Constitution.

2) Heads of the three authorities

The presence of the head of the executive branch in the Review Council, due in several aspects, including that he was chosen by the vote of the people directly and his presence means the presence of all people (Oliver, Roy,1999) The presence of the head of the judiciary in the Council is tantamount to benefiting the Council from science and the experience of the judiciary, as well as the presence of the President of the Islamic Shura Council is not measured by the value of the presence of the heads of the other two authorities, and as we know the Speaker of the Council is responsible for the management of the sessions only and has more choice than other deputies, but this presence came as a result of article (138) in its last paragraph by saying: "These decisions and regulations issued by the Council of Ministers or the committees mentioned in this article, within informing them of implementation, are sent to the President of the Islamic Consultative Council to be informed of them even if they find them contrary to the laws and return them to the Council of Ministers, while explaining the reason, for review"(Izdi, Bezen, 2000)

3) Permanent members of the System Interest Diagnostic Complex

The members of the Permanent System Diagnosis Complex are the real people who are positioned by the leadership and who were selected because of their knowledge of the high interests of the system to consult the leadership in the complex, and there is no doubt that taking care of the interest of the regime in reviewing the Constitution requires the presence of this elected group in the Council in terms of leadership in order for the Council to benefit from their work and experiences.

4) Five members of the Leadership Experts Council

The presence of these members based on the seriousness of the department of experts related to the leadership, and in order to harm the relationship between this department with the main issue in the Constitution requires the presence of several deputies from this department in the Review Council and to guard the materials related to the leadership, and the reason for the appointment of five people is that it is possible that some members of the Council of Experts belong to other titles in the Council and as is currently some of the leadership experts are among the members of the diagnostic complex of the interest of the system (Ayatollah Yazdi. 2007)

5) Three cabinet members

It is not to be seen that the presence of the Republican presidency in the Review Council does not diminish the need to attend the experiences of ministers in the Executive Council, especially when the case for reviewing the Law of the Constitution is linked to special work and in a particular circle. Many of the extraneous judges cannot be established within the ministry and by the imposition that the ministry or ministry that is leaving with a share of it, the presence of the several ministries in accordance with the topics of discussion in the review council can be extraneous, but usually does not affect the issue of discussion more than three ministries.

6) Ten deputies of the Islamic Consultative Council

If the members of the Review Council were aware of the privatization in the chambers, there is no doubt that the Islamic Council was enjoying a larger share because of the power of technology. In fact, the curriculum in circulation in reviewing the constitution law in the country's hostile world is not about the power of legalization. From another point of view, in the review council chosen by imam (The Holy Secret) is five people, i.e. the share is one fifth of the total members of the Council and twenty percent of the council is competent, when in the actual seating of the review council imposed is thirteen percent or 79 people The council is reserved for only 10 people, and with those deputies who are selected from the board of directors to belong to the Review Council, they must enjoy the necessary effectiveness and disciplines as they can. The revolutionary in the second councils(Bruin, Khair Al-Ah, 2009)

CONCLUSION

At the end of this research, we conclude that there are similarities and differences that are contained in both the Iraqi and Iranian constitutions in the field of shrines and those responsible for the amendment.:

First, in terms of similarities.

Through our study of the Iraqi and Iranian constitutions on the subject of shrines and officials, there were no resources to resemble the two constitutions, and of course this is due to the different nature of the structure of the two regimes under which the constitution was drafted.

II) in terms of differences

There are relatively large differences with regard to the legal structure and the ruling regime in Iraq and Iran, but this difference is rooted in the very different circumstances that prevailed in the two countries at the time of the drafting of their new constitutions, and other influential factors such as the different historical backgrounds of the

Governments of the two countries have also played out, and the different political situation has had its presence on this subject, so we note the composition of both constitutions on the subject of reconsideration, and these differences can be included in the following:

A) The system in the Republic of Iraq is the parliamentary system, while the system in the Islamic Republic is the leadership system.

B) The Iraqi constitution was entrusted with the task of amending the constitution to the legislative and executive branches, while the Iranian constitution was entrusted with the task of reviewing the status of the leadership and making it the highest authority in the country.

C) The reference discussed with regard to amending the Constitution is the legislative authority of the Iraqi Constitution, while the reference discussed is the Review Council of the Iranian Constitution.

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