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Two-element Legitimacy as a Theory of Legitimacy of the Islamic Republic of Iran's Constitution with a Look at the Detailed Annotated Deliberations

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Abstract

One of the most significant issues in the terminology of democracy and democratic governments is legitimacy (better known as *mashroo'iyyat* in Islamic terminology). In a democratic system, first of all, one should answer these questions: where does the credibility of the government come from and what is the role and position of the people in the government? Hence, in explaining the nature of the Islamic Republic of Iran's system, the issue of legitimacy plays a vital role; yet, investigating and analyzing the theory on legitimacy of the Iranian ruling system is essential. The Islamic government, which is proven to have divine legitimacy and derives its legitimacy from the Sharia, needs social legitimacy as proof and is in the realization stage, its manifestation lies in people's choice and public consent, and the legislator of the constitution also accepts the two-element legitimacy and knows it as the real concept of the Islamic Republic and thus has extended it to all the institutions arising from the constitution. Furthermore, the structure of divine-popular legitimacy can make the limited and bound by the Sharia democracy theory understandable and defensible.

Keywords: Legitimacy (mashroo'iyyat), religious democracy, two-element legitimacy, constitutional law, detailed negotiations.

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Introduction

The Islamic Republic of Iran is a system of government born from the will of the Muslim nation of Iran and one of the most popular revolutions in history, whose greatest goals were independence, freedom, and justice in the light of Islamic rule and religious democracy. Democracy is an idea that has undergone many historical evolutions and has come a long way from Greek democracy to modern democracies, and in recent decades, the possibility of realizing different models of democracy has been proposed. After the Islamic Revolution and the establishment of the Islamic Republic, the issue of religious democracy and its possibility as a Sharia-bound democracy has been the concern of a group of Muslim thinkers and researchers for many years, and the legitimacy of the government is naturally one of the important issues in the terminology of democracy. In this article, we intend to explain the theory of legitimacy in the constitution of the Islamic Republic as a system based on religious democracy, since we take the issue of legitimacy as one of the most significant issues in the field of democracy, whether secular or religious. The study takes advantage of the descriptive and analytical method, but in examining the related articles of the constitution, it will seek to analyze the intention of the legislator; First, the foundations and definitions of legitimacy in politics and the possibility of two-element legitimacy will be dealt with, then, by emphasizing the fourth, fifth, sixth, fifty-sixth and one hundred and seventh articles will be dealt in the light of the detailed constitutional negotiations legitimacy, and the nature of relationship between the two elements of divine legitimacy and popular legitimacy and the mentioned articles will be briefly evaluated. Another point is that the study will present some basics related to the possibility of two-element legitimacy and it will discuss the divine-public theory in brief. Focusing on the analysis of this theory through the lens of the constitution, no room will exist for an extensive design of jurisprudential and theological foundations, and thus, the focus will be more on the constitution and finding the objectivity of the theory of divine-public legitimacy in the constitution of the Islamic Republic of Iran as the crystallization of religious democracy. Taking advantage of descriptive analysis, the present study attempts to investigate various intentions of the legislators of the constitutional as well as the spirit of the law in the light of the detailed negotiations of the constitution. As for the background of the research, nothing has been done so far regarding two-element or divine-popular legitimacy as a theory of the legitimacy of the Constitution with emphasis on the details of the negotiations.

1. Definitions of legitimacy

One of the most important issues arising in the field of government and

especially in the field of democratic thinking is the issue of legitimacy (in Islamic terminology known as mashroo'iyyat), and thus its explanation should be considered one of the most important topics in democracy. Accordingly, to explain any model of democracy, investigating the theory of mashroo'iyyat is crucial. There is a lot to say about the place of mashroo'iyyat, but first, we have to deal with its various definitions. Mashroo'iyyat is lexically from the root of the word sharia and in its historical development it means to be in accordance or compatible with sharia (Sadri, Afshar and Hokmi, 2003). In political philosophy and modern constitutional rights, the concept of legitimacy/mashroo'iyyat has evolved, and in political science, it consists of "the conscious and voluntary acceptance and obedience of the people to a government and ruling power" (Abul-Hamd, 1991, p. 244). Heywood (2008) considers legitimacy as the extended meaning of authenticity and believes that the special work of legitimacy is transforming "naked power into rightful authority" (p. 44). According to some scholars such as Dabirnia (2014) legitimacy in the field of fundamental rights or the constitution-based legitimacy is formed in a democratic process and follows the fundamental human rights; yet, it is obvious that this definition is inspired by the natural rights approach. According to Martin Laughlin's (2010) assertion, in modern societies, the government does not claim to rule over the people, rather, it is the people's representative through the politicians' election by the same people. The mentioned idea, yet, remains merely a claim or the hope of the scholar for it is not harmonious with the existing reality of the world of politics. On the other hand, in the course of its development, the concept of legitimacy has sometimes become synonymous with legality, while the two are not the same and such synonymity cannot be true. In the evolution of the concept of legitimacy, especially with the emergence of natural rights and democratic values, the concept of legitimacy as legality has lost color, since it is possible that dictatorial and fascist governments also base their actions on law and legality, while their actions are against the morals and nature of human beings (Javid, 2008). Therefore, in the late modern definitions, especially the approach based on liberalism and natural rights, an action is considered legitimate in that not only is it legal but does not conflict with a series of accepted values. Therefore, legitimacy is different from the rule of law since legitimacy is the basis of the law and is a posterior concept compared to the law as a principle and it is the legitimacy that justifies the law for the law itself cannot create legitimacy; i.e., legitimacy gives acceptance to the exercise of power and government over the citizens; And in the absence of legitimacy, governments are impelled to resort to force and indulge in dictatorial tools (Vizheh, 2011). The key thinker John Locke (1632−1704) considered satisfaction as a fundamental element of the theory of legitimacy and social

contract. In addition to the social contract, he referred to the government contract, whereby he meant that after the social contract, its signatories agree on the delegation of authority to a person or group, and that person or group is required to adhere to the legal powers specified in the constitution and natural rights and freedoms (Tehrani, 1991).

1-1. Recent approaches to legitimacy and possibility of two-element legitimacy

Legitimacy in the field of political philosophy generally seeks to discover philosophical truth and to understand which government is competent to guide society to progress and prosperity in the general sense of the word. It should be noted that when we talk about the truth in the context of modern political philosophy, it should not be confused with a religious perspective. What is meant by truth in this context is the competence of a political regime to govern the people and ensure proper governance over them. Therefore, legitimacy in the approach of political philosophy is focused on two questions, firstly, who is worthy of government? and secondly, in what ways and by what criteria can the legitimacy and competence of a government be measured? In other words, the political philosopher attempts to explain the origin of the legitimacy of political authority and government (Hatami, 2010). The sociological perspective is another perspective that can be used to address the issue of legitimacy. In the political-sociology-based approach, the question arises as to why people obey their leaders and how a political system is considered legitimate in the eyes of the majority of citizens. Therefore, legitimacy from the viewpoint of political sociology finds variable and multiple criteria based on the social conditions in different societies (Hatami, 2010). On the other hand, in the sociological approach, to the extent that the values of the government and the people are aligned, we can speak of social legitimacy (Rafipour, 1997). The concept of legitimacy has moved further and further from an abstract philosophical concept to a concrete sociological concept in the course of its evolution in the modern era. Hence, social acceptability and general satisfaction of citizens are considered as the main criterion and measure of legitimacy. Moreover, from a sociological point of view, legitimacy is closely linked with efficiency. Liebsit (1995) believes that efficiency indicates the ability of a system to fulfill the basic functions of a government in such a way that the majority of people and powerful groups within the system can see its realization. He considers efficiency as a tool category and legitimacy as a value concept. Therefore, one can talk about a concept called multifaceted or multi-layered legitimacy, which is a combination of legitimacy and efficiency. Another point is that with the rise of the waves of postmodernity and the pluralization of societies, the discussion of legitimacy has gained a new meaning in this space, and based on the

viewpoints of some contemporary thinkers perhaps it can be claimed that the dominance of the sociological perspective in the field of legitimacy, which is closely related to the spread of postmodern discourse, has challenged the achievement of universal standards about legitimacy. In his discussion of communicative action, Habermas, et al. (2010) point out the connection between "law and social solidarity" for legitimization in a democratic process (p. 71). In his discussion of communicative action, Habermas (1987) is pessimistic about the existing democracy and considers it merely a basis for mass loyalty and a kind of populism, which is against the democratic process and is a sort of deviation and degeneration in political participation (pp. 357-362). According to Habermas (1996), none of the liberal and republican approaches includes a comprehensive theory in the field of legitimacy and legitimate law. He believes that by restricting legitimacy in the context of liberalism and natural rights, liberals have distorted the context of citizens' use of communication rationality in the public sphere to form common values in the framework of intersubjective concepts, and republicans, by negating individualistic values and overemphasizing public will and common values, have marginalized the private sphere and individual will. As Ansari (2015) put it, "Habermas has tried to present a synthesis of these two views and in a way to present a middle approach between the two by the requirements of his communicative action theory" (p. 221). Nevertheless, what is very important is that the separation of the philosophical reading as the truth in the world of evidence from the sociological reading as the social satisfaction of a government or political regime plays a very important role in the possibility of two-element or double-natured legitimacy. Although it is possible that from the point of view of thinkers who believe in a modern democracy, especially liberals, the difference in the philosophical and sociological approach to legitimacy is simply the difference in the perspective of two branches of knowledge, because legitimacy in modern democracies, especially liberal democracy, has a single source, the researchers of the present study believe that this difference in perspective can help the possibility of processing and engineering a sort of legitimacy enjoying two elements or a two-fold standpoint of legitimacy in a political system.

2. Divine-popular legitimacy in religious democracy

Divine-popular legitimacy or two-element legitimacy is a model that can be considered as the theory of the legitimacy of the Constitution of the Islamic Republic of Iran, and it can be claimed that the legitimacy of the Constitution is based on this theory, and some thinkers and foqaha[1] are also of this opinion; i.e.,

1. plural of faqih; jurists

Jurists such as Ayatollah Khomeini in his later opinions found in the book of Sahifeh, Ayatollah Sayyid Mohammad Baqir Sadr in the book of Khilafat-al Insan wa Shahadat al-Anbiya, Ayatollah Hossein Ali Montazeri in the collection of Derasat fi Wilayat al-Faqih wa Fiqh al-Dawlah al-Islami, Ayatollah Khamenei in the collection of speeches in explaining religious democracy and the role of the people[1], Ayatollah Sayyid Abbas Hosseini Qa'im-Maqami in the book Power and Legitimacy. These all can be classified under the divine-popular tendency. There exists no room for explaining their jurisprudential foundations in this article. Additionally, there may be various competing readings about some jurisprudents, especially those of Ayatollah Khomeini.

Therefore, the study goes on to focus on the objective realization of this theory in the Constitution.

In a nutshell, in the Islamic Republic of Iran, one fundamental element or pillar of legitimacy is based on the validity of Sharia, which the content of the system and laws are also by it, and the other is based on the validity of the choice and consent of the people, and as we will point out in the future, these two elements are in all the components of the legal system. The basis of the Islamic Republic exists directly and indirectly. On the other hand, these two elements of legitimacy are significant both in the pre-domination stage (the stage of forming the government) and in the domination stage (the stage after the formation and establishment of the government), and the Islamic republic, popular legitimacy is not confined only to the stage of accepting the government, but also it must be always continued and measured through elections and political participation, and thus, popular legitimacy and its continuation in the stage after the formation of the government is also highly dependent on the efficiency issue. On the other hand, there is a divine element of legitimacy for the Islamic government and a qualified Muslim ruler, so the choice of the people as a secondary element of legitimacy plays a role both initially and continuously in the Islamic government. The effect of separating philosophical truth from social legitimacy is also clear here and the role of the people in the objective realization of the government and its continuation must be clarified. Now, if based on the religious democracy which has realized in the Constitution of the Islamic Republic of Iran, the objectification of the divine legitimacy of the Islamic government and its emergence and realization is based on the initial choice and vote of the people, and its continuation is also subject to the consent of the people and is based on the non-acceptance of domination and

1. For more pieces of information, refer to "The issue of legitimacy in the theory of religious democracy of Ayatollah Khamenei", 1395, Mohammad Bagherkhormshad and Parviz Amini, Dolat Research Quarterly, No. 15, Journal of Faculty of Law and Political Science, Tehran, Allameh Tabatabai University.

usurpation as the basis of legitimacy in Shia political jurisprudence and also based on the unlawfulness of dictatorship and tyranny, which is one of the axiomatic principles of Shia jurisprudence, one cannot consider the continuation of the government as possible except with public consent, a concept for which, Mohaghegh Naini appropriately explains (Feirahi, 2010). Then, what is the place to distinguish between legitimacy and acceptability, that is, how avoiding the choice and consent of the people in the realization of Islamic government as a right can be justified? People recognized it and considered it as an element of legitimacy along with divine legitimacy based on the validity of the rule of Sharia and the divine establishment of jurists in the age of occultation.

Because there exist mixed rights in jurisprudence, which have one aspect of God's rights and one aspect of human rights, for instance, the punishment for theft, qadhf[1], and zakat[2], then, is the mixing of God's rights and people's rights with each other also a dualism? It seems that in the engineering of the religious democratic system in the era of the absence of Imam Asr (May God hasten his reappearance), the vote and the role of the people can be considered as the element of objectivity and the survival of the Islamic system. Accordingly, in theoretical analysis, the role of the people's vote should be analyzed as a declaration of loyalty and efficiency. In other words, it is necessary to accept the combination of the element of proof and the element of realization in this area. Notably, it is reemphasized that the present study discusses the objective realization of the Divine-public legitimacy in the Constitution of the Islamic Republic of Iran while there is no opportunity to deal more with jurisprudential and theological foundations. Therefore, it can be said that legitimacy in a religious democratic system is the existence of divine legitimacy and the validity of the Sharia for a government, which comes into existence and objectivity by the people's choice and is realized, and until this element of proof is not fulfilled, the legitimacy of the government is incomplete. This is not to be forgotten, however, that the relationship between divine legitimacy as an element of proof (formation) and popular legitimacy as an element of stability (continuation) is a hierarchical relationship, with the first on the top and the latter beneath it.

3. Legitimacy in the constitution of the Islamic Republic of Iran

Consulting many scholars in the field and asking the experts' opinions, the researcher concluded that while there are many articles in the field of legitimacy in the Constitution of the Islamic Republic of Iran, the fourth, fifth, sixth, fifty-sixth, and one hundred and seventh articles are the most important

1. a kind of swearing that means accusing someone unjustly of adultery or sodomy
2. a form of almsgiving which is considered in Islam as a religious obligation, and it is often collected by the Muslim Ummah. By Quranic ranking, it is next after prayer (salat) in importance.

ones which contribute to the explanation of the macro-system of government legitimacy.

3-1. The Fifty-sixth article in the details of the constitutional negotiations

Having a glance at the history and development of the fifty-sixth article of the constitution, we realize that this article was prepared in the initial draft regarding national sovereignty and was predicted in the form of the twelfth article that stated 'national sovereignty belongs to all the people and it should be used for public benefit and no individual or group can appropriate it'. The mentioned article, after the examination by the relevant commission, was raised in the Parliament of the Constitutional Review as "The right of national sovereignty, which is the same as the right to determine social destiny, is a general right given to all members of the nation to directly or through the appointment and selection of the qualified individuals be applied in full compliance with the laws. No individual or group can appropriate this universal divine right or use it to serve their own or a specific group's interests" (Vara'i, 2006, p.351).

Based on the Annotated Deliberations of the Assembly of the Final Review of the Constitution of the Islamic Republic of Iran (1985)[1], Martyr Ayatollah Dr. Beheshti, as the deputy speaker of the parliament, declares this article that "While approving the article, we also said that the right of national sovereignty means independence within a country and that other countries do not have the right to interfere in the affairs of that country, but here the right to sovereignty is more appropriate since such a right is raised based on whether an individual, a family, or a group has per se the right to rule over others in human society or not? Where does the right to sovereignty come from? From a specific race, from a certain dynasty, from which of the characteristics? It has another dignity in some countries, and that is that even the right to legislate and formulate laws is rooted in the people". (p.527). In defense of the article, one of the representatives by referring to the 11th ayah of Quranic surah of Ra'd, "Allah does not change what is in a nation unless they change what is in themselves." defended the article as follows: "In whose hands is the right to determine the social destiny, the destiny of the country? Except for the people? The destiny of the country, which is in the hands of the president, the prime minister, the judiciary or the jurist, is all by the choice of the nation; it all returns to the nation". (p. 527). Makarem Shirazi, another representative explains the issue as follows: "The right to national sovereignty is the same as determining the social destiny. You accepted the jurists and even chose the religion of Islam because you know that it is from God Almighty, and He is knowledgeable about all issues and knows what actions and behaviors and what beliefs are effective in

1. Published by I.R. Iran. Parl.

our material and spiritual happiness, and He is the one who decreed and legislated them and we have chosen [accepted] them. Therefore, everything, even choosing a religion and a leader is by the choice of the nation, of course, the ruler is the Almighty and the sovereignty of the nation is [actually] the shadow of the sovereignty of God that He has given to the people, then the nation must leave the trust to its people, that is, people have the responsibility to make their choices according to the rules of Islam and to swear allegiance to the leader and vote for him." (p. 512). It seems that, as the proponents stated, the right of national sovereignty does not conflict with wilayat al-faqih (the authority/guardianship of the Islamic jurist) and the rule of Sharia because the realization of the rule of Sharia is based on the choice and vote of the people.

3-2. Different interpretations of people's role in legitimacy and the right to self-determination

In general, it can be said that there exist several interpretations of the issue of national sovereignty and the right to self-determination, and in a word, the role of the people in the legitimacy of the government in the detailed deliberations of this article in the 1985 Review of Constitution. According to Annotated Deliberations of the Assembly of the Final Review of the Constitution of the Islamic Republic of Iran (1985), among the representatives, some believed that "the national sovereignty is a right granted by God, which is given to all people in some fields, such as the right to enjoining good and forbidding evil, referendum, public defense, and public uprising. Some fields, such as guardianship (velayat), have been assigned to the fully qualified jurist" (p. 510). And as it was mentioned earlier, some believed that "national sovereignty is one of the shadows of God's sovereignty based on which the people choose the jurist to exercise the guardianship" (p.512). One of the MPs (a representative of the parliament at that time) expressed that "National sovereignty is under the authority of the jurist, and the people are the means of exercising the guardianship of the Islamic jurist, while it should be simplified here that people, with the permission of the jurist, indirectly, and through the channel of the three powers [of the country] and through the channel of the power of the nation such as referendum and enjoining what is good and forbidding what is bad (and the like) directly exercise sovereignty." (p. 515). Additionally, The Vice President of the parliament of the time explained the difference between national sovereignty in the West and Islamic teachings as follows, "National sovereignty in the West means the independence of each nation and country in determining its destiny. At the same time, it means negation of the sovereignty of a particular group, dynasty, group, social stratum, etc.; And it has another dignity in some countries, and that is the right of the people to legislate" (pp. 522-523).

Referring to the approval of the velayat-e faqih[1] principle, one of the representatives considered the principle [national sovereignty] meaningless and related all these [national sovereignty] issues to the propaganda that some people have created and tried to magnify it. Then, he emphasized that "We must deal with the issues decisively after approving the article called the principle of velayat al-faqih. The limits and powers that individuals and people have according to Islam are completely clear and there is nothing behind the curtain in this regard" (p. 513) In response to this doubt, another representative said: "This article is valid under the guardianship of the jurist because if the jurist wants to exercise guardianship, he will not directly exercise it. Rather, he logically does it through the people, and we call these acts national sovereignty. People will have such sovereignty with the permission of the jurist because the people can exercise sovereignty in two ways: sometimes directly and some other times indirectly. The direct way is the one that will come under the title of the power of the nation, in the name of referendum, enjoining good and forbidding evil, public defense, public uprising, [etc.], and the indirect one will be implemented through the executive, legislative and judicial powers" (p. 515).

According to Annotated Deliberations of the Assembly of the Final Review of the Constitution of the Islamic Republic of Iran (1985), Abdolkarim Hasheminejad as one of the opponents of the article, reemphasizes the redundancy of this article and stipulates that in the sixth article, it is emphasized on the reliance of [all] affairs on public votes. Then, another representative states that "the eighth paragraph in the third article also emphasizes the participation of the public in determining their political, economic, social and cultural destiny, here, however, we intend to approve an article upon which, in the future, the right of national uprising against tyranny and deviations can be recognized" (p. 517).

Although it seems to be irrelevant, according to the just-mentioned document, one of the supporters of this article considers the article in line with the third article of the Universal Declaration of Human Rights, which emphasizes the right to life, liberty, and personal security for individuals. Considering the presence of such main beliefs in religious literature, which is similar to the legal and political culture of the world, and that the proposed article and the right of people to determine their destiny does not conflict with religious doctrines like origin and resurrection, Ayatollah Beheshti, the vice speaker of the parliament of the time proclaims this article as a privilege, and sees no problem in adding this article to the constitution. This is while some other representatives emphasize and insist on the opposition of this article to divine sovereignty and

1. Also velayat-e faqih and velayat al-faqih: the guardianship of the Islamic jurist

the conflict of the sovereignty of God with the sovereignty of the nation and the guardianship of the jurist. Ayatollah Beheshti, the vice speaker of the parliament, emphasizes that the article reminds the MPs of the fifth article wherein they approved that the velayat [guardianship] and imamate [leadership] of the Ummah is the responsibility of a fully qualified jurist who is recognized and accepted by the majority of the people as a leader. The result is that even the fifth article is not independent of the role of the people, whether guardianship is the responsibility of an individual jurist or a council of jurists, in any case, it deals with the selection and acceptance of the people, and it has no dignity and completeness until it is chosen and accepted by the people. This interpretation of the vice president can be found within the context and framework of defending the two-element legitimacy. Therefore, four amendments were made in the original text of this article as follows.

1) "The beginning of the article ((God's absolute sovereignty over the world and man)) should be mentioned.

2) The phrase 'national' should be removed from sovereignty so as not to be confused with its synonym in other political schools.

3) Man's sovereignty over his social destiny should be based on God's sovereignty.

4) The quality of exercising sovereignty over one's destiny should be removed and transferred to other articles" (Vara'i, 1386, p. 359).

Finally, the current fifty-sixth article[1] of the constitution was approved. The article accepts the right to self-determination, and the representatives have paid attention to the fact that without accepting the place of people's vote in the government, it is meaningless to talk about democracy. The tendency of the majority of the MPs toward the issue displays that they believed the non-conflict of the two elements of 'Sharia' and 'people's vote' (choice). Therefore, both elements of legitimacy are visible in this article since on the one hand, it assumes divine sovereignty, and on the other hand, it recognizes the right to self-determination as a right granted to mankind by God.

4. Sovereignty of Sharia and legitimacy of laws

The fourth article[2] of the Constitution of the Islamic Republic of Iran, which

1. 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 man of this divine right. or to serve the interests of a particular individual or group, and the nation applies this God-given right in the ways that are mentioned in the following principles.
2. All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons (foqaha) of the Constitutional Council are judges in this matter.

was foreseen at the initiative of the Constitutional Review Assembly and had no precedent in the draft, stipulates the subordination of laws to Sharia and the rule of Sharia over all laws by declaring that all laws and civil, criminal, financial, economic, administrative, cultural, military, political, etc. regulations must be based on Islamic standards. This article governs the general application of all the articles of the constitution and other laws and regulations, and it is the responsibility of the Guardian Council to determine this. While the second article states that the religious foundations of the system are based on Sharia, and moving in the direction of the goals of the Qur'an and the Sunnah and implementing Sharia rules are an integral part of the Islamic Republic as a religious government, the fourth article is based on the theory of legitimacy governing the Constitution of the Islamic Republic of Iran, and by emphasizing the rule of Sharia over legislation, it is a supporter of the Sharia element of legitimacy in the field of legislation, and in this regard, it has given the responsibility of Sharia supervision to the jurists of the Guardian Council. Regarding the mentioned article, however, key definitions such as Islamic standards should be recognized first. The meaning of the word ‘ mawazin’ in the text of the article according to the Moin Encyclopedic Dictionary (2009) means measures, quantities, and scales that are interpreted as standards. What is meant by Islamic standards are the same Shar'i (divine; religious) or fiqhi (jurisprudential) standards, which can be distinguished by the six jurists of the Guardian Council, who are responsible for this according to the ninety-first article.

Regarding the classification of Islamic rulings, it should be noted that rulings are divided into three categories: hokm awaliyyah (primary ruling), hokm thanawiyyah (secondary ruling), and hokm hokoumatiyyah (government ruling). In short, a primary ruling is a ruling on actions that are burdened in the normal state and terms of their first title, such as the ruling on the obligation of morning prayer and the sanctity of intoxicants (Mishkini, 1995). A secondary ruling is a ruling that is imposed on a subject due to the existence of exceptional conditions or the occurrence of special conditions, these special conditions are called secondary titles in jurisprudence, such as the rulings that arise from the existence of necessity, difficulty and hardship, and the likes which are imposed on a person in special circumstances, such as the sanctity of fasting for a sick person after the obligation of the first ruling, i.e. fasting in the month of Ramadan. The secondary ruling is based on expediency or necessity, which causes the primary ruling to be temporarily abandoned and until the expediency or the necessity continues to exist, the secondary ruling should be effective, and what is meant by the governmental ruling is the ruling issued by the Imam or his deputy (Hashmi Shahroudi, 2005). According to Ayatollah Khomeini (2000),

the government ruling and the ruling itself is one of the primary rules of Sharia, which takes precedence over all the primary rules.

Although the procedure of the Guardian Council from the beginning of its establishment has been to rely solely on checking the non-contradiction of the approvals with the primary rulings, and perhaps that has been one of the reasons that caused Ayatollah Khomeini to issue the decree on the establishment of the Expediency Discernment Council on 6th February of 1988, this procedure of the Guardian Council led to the multiplicity of legal authorities in Iran's constitutional law system. The argument of the Guardian Council in this regard, yet, is that according to article 96, recognizing the contradiction or non-contradiction of the approved [or would-be-approved] articles and laws by the Islamic Consultative assembly with Sharia is the responsibility of the majority of the foqaha of the Guardian Council. Foqaha of the Guardian Council are appointed by valiy-e-faqih (Islamic Jurist Guardian), and they must deduce the Sharia ruling by using Adellah Arba'ah (the four pieces of evidence, i.e., Book, Sunnah, Reason, and Consensus) and confirm and apply the ruling to the approvals of the parliament. At the time of contradiction of the primary rulings with expediency and/or the secondary necessity, valiy-e-faqih must recognize and issue a government ruling for the sake of expediency. In this regard, it should be first pointed out that due to the facts that the jurists of the Guardian Council are fully qualified and the second article emphasizes the continuous ijtihad[1] of foqaha as one of the foundations of faith in the Islamic Republic system, that one of its manifestations in the field of Masa'il Mostahdethah (secondary/newly-emerged issues), the necessity of ijtihad is proven. Secondly, in Islamic governance and based on its requirements, there is essentially no difference between the three types of primary, secondary, and governmental Sharia rulings, and all three have a clear basis in sharia and fiqh, of course, governmental rulings are in line with expediency and preserving the system (Ka'bi, 1394, pp. 214-215).

Concerning 'itlaq and 'omoum in this article, it should be briefly mentioned that some scholars believe "the terms 'itlaq, 'omoum and hakim used in the science of fiqh and osoul (the principles of jurisprudence) means that in the legislation, typically, some terms are used that are inclusive of all people and individuals and they include various situations in the legal matter so that a particular person or situation is not excluded from them" (Amid Zanjani, 2009, p. 67). Some other jurists believe that "The 'itlaq of the law is something whose totality is not specified in the word [not explicitly mentioned], but the totality is understood [or can be inferred] from the whole text, and 'omoum is that the law

1. Deriving and deducing Sharia rulings from scriptural sources

is inclusive and specified [the text of the law explicitly shows its generality]. Whatsoever has come up to now or will come from now on in the constitution with the normal law or regulations, if it contains ‘itlaq and ‘omoum, all of them are under the cover of this article” (Yazdi, 1997, p. 80). According to Annotated Deliberations of the Assembly of the Final Review of the Constitution of the Islamic Republic of Iran (1985), some opinions on criticizing and defending the mentioned terms, i.e., ‘itlaq and ‘omoum, were also raised by the MPs in the Constitutional Review Assembly. As an example, Abdullah Ziaei-nia says: “In this fourth article of the constitution which is the mother law, when we said [discussed and approved] all laws and regulations, this adverb ‘all’ includes all laws and regulations, therefore, there is no need to add ‘itlaq and‘omoum to it” (pp.348-349).

Another issue is that when the text of the fourth article stipulated that all laws must be based on Islamic criteria, it is not fully clear whether it means the conformity of the laws with the Sharia or non-contradiction with the Sharia. If we mean the first, the conformity of all the laws with the Sharia is impossible for not all the laws can be derived from the Sharia texts. For instance, many of the necessary laws for organizing and disciplining the affairs of the country are within the field of ‘mubah’ (permitted; neutral) and ‘ma la nassa fih’ (Without any authentic document or text to refer to), but as from the Annotated Deliberations of the Assembly of the Final Review of the Constitution of the Islamic Republic of Iran (1985) is inferred, Shahid Beheshti presents a very detailed explanation of the issue. In his reading, not only is it possible and necessary to conform the laws to the Sharia, but also a wide room is left for the supervision of the laws by the jurists of the Guardian Council that is in line with the advancement of the Sharia goals in the legislative system of the Islamic Republic of Iran. Shahid Beheshti believes that “We cannot say that all laws and regulations must be derived from the Quran and Sunnah, we must say that they must be in accordance with the general lines of the Quran and Sunnah, within their limits and not against them” (p. 316). Although the appearance of this speech is within the framework of the theory of non-contradiction, considering the outline of the Qur'an and the Sunnah, some of which are also mentioned in the second article of the Iranian Constitution, including the issue of equity and social justice at different levels, can open a wide horizon for protecting the Sharia in the field of legislation, and indubitably, this shows that the protection of the Sharia within the framework of the goals of the Sharia can take place in a much wider horizon than the exclusive approach to the primary rulings or texts. In the meantime, government rulings can also open the way to the realization of the general lines of Sharia, yet, examining the aspects of this issue requires a more detailed discussion, which is not possible in the present study, and so,

it can be said that the fourth article of the constitution has guaranteed the Islamicity of the system.

4.1.The democratic aspect of legislation in religious democracy

The study, here, aims at answering the question of from which perspective the democratic aspect of legislation in the Constitution of the Islamic Republic of Iran can be analyzed. Regarding the democratic dimension, the content of legislation in the Islamic system as well as its relationship with the Sharia is clear as expressed by the content of the fourth article. At the beginning of the Persian Constitutional Revolution, Allameh Naini (1982) in defense of the necessity of the legislative system and especially the constitution, writes: "Among the fallacies that the worshipers of the oppressors make is that they announce that despite the existence of the Holy Book and the tradition of the Seal of the Prophets, the drafting of the [new or other] law [rather than the original one] is heresy and haram in Islam. The constitution is a means of preventing and limiting usurpation, and its details are either customary laws, which are legitimate and binding due to the premise of being obligatory, or religious laws, which are common among the public" (pp. 73-74). Moreover, by distinguishing between the two fields of legislation, some thinkers have tried to justify the role of people and representatives in certain matters of legislation. In this regard, the interpretation of the two scholars is discussed as follows.

The first interpretation is related to Ayatollah Javadi Amoli (2004), wherein by raising the issue of consultation and referring to the related Quranic verses [on consultation and forming the council], he places this domain as the domain of the people's legislation and writes: "The domain of consultation is Amr al-Nass[1], not Amr-Allah[2]. In the Islamic system, legislation and judiciary power are within the realm of Allah (amr-Allah), and the implementation of divine law is within the realm of people(amr al-nass). For example, it is incumbent on

1. "Amar al-Nass" [Peopls' command] refers to matters of human life that God does not have a special requirement about; In this field, the society is guided and governed based on the opinions and votes of the people, and the government of men is obliged to manage the society according to their wishes and will. God is in such a field that he orders his prophet to exchange opinions and consult with people and encourage them to consult with each other (See Surah Shura, verse 38, and Surah Al-e Imran, verse 159).
2. Amr-Allah" [God's command] is the field of divine decrees and regulation of divine laws, which is reserved for the Almighty God, and the opinion of the people and the republic have no way in this field. The meaning of "God's command" is those issues that have been given a special opinion in religious texts; i.e., the arena where the Islamic rules and laws of God are located, and everyone, from the rulers to the Islamic Ummah, is obliged to observe them. Therefore, the field of God's commands is the field of following God's decrees and commands, and paying full attention to and preserving the privacy of all of them is an unavoidable necessity in the religious government.

people to use their natural resources in the best way and to preserve their independence. Here, consultation plays a decisive role and there exist some discussions about whether agriculture, animal husbandry, or other industries be strengthened, how should the country be built, how should investment, how should the traffic problem be solved, such questions remain for all other matters related to the construction of the Islamic society including economic, political and military problems and the like" (p. 477). The aforementioned faqih further writes: "Where there is amr al-nass, the people's councils, negotiations and votes are valid. The people possess their votes in their personal affairs and the public affairs of the country, and the divine religion recognizes them as owners of their votes. For example, how people should live, how they should farm, how they should have shipping, fisheries, and aviation, how their international relations should be, with whom they should trade and with whom they should not trade, what should be the legal regime of the sea, these are amr al-nass and all of them are related to the people; i.e., people's affairs which are done by their opinions and counsel" (Amoli, 2004, p.499). Finally, the aforementioned faqih writes as follows: "If people want to take control of their circumstances or public and national affairs, they do not need permission from the [jurist] guardian of the Muslims in advance, or ask for permission after that action. What is necessary is that the people do not oppose that specific part" (p.493). Based on the above theory, Amoli (2004) separates amr Allah from amr al-nass, and such a separation can mean another interpretation of the rights of God and the rights of the people respectively. Although he generally considers the domain of legislation as [being] amr Allah, in fact, he has given many examples of governance in the domain of amr al-nass wherein the entry of the legislative body into these contexts is inevitable, and thus he has recognized legislation in many matters of life that are within the scope of ma la nassa fih; that is, those matters for which there exist no rulings in the texts.

Another very important theory that has a serious application in the analysis of the democratic aspect of legislation in the Islamic system under the rule of velayat-e-faqih is the theory of Mantaqah al-Faragh of Muhammad Baqir Sadr[1]. According to him, Mantaqah al-Faragh refers to a special territory of Sharia rules and norms. In explaining the scope of this region, he writes: "Variable laws that change with the changing conditions of the government, the origin of the changes in them is that they have not appeared directly in Sharia, nor have

1. Muhammad Baqir al-Sadr (1935-1980), also known as al-Shahīd al-Khāmis (the fifth martyr), known in Iran as Shahid Sadr, was an Iraqi philosopher, and the ideological founder of the Islamic Dawa Party, born in al-Kadhimiya, Iraq. He was one of the greatest contemporary Shiite jurists and thinkers.

they appeared in the form of specific texts in Sharia, and thus they can be deduced from the rules of Sharia only within the framework of circumstances that can be changed and transformed" (Sadr, 2007, p. 263). In regards to ahkam-e tarkhisi (optional rules; the rulings of exemptions) and the scope of mubah (neutral or permitted acts), it should be said that ahkam-e tarkhisi are: "Rulings that do not have a Sharia requirement in doing or not doing an act, which is caused by emphasizing performing an act or not performing [or leaving an act] and is placed whether in the form of advisability or inadvisability [abomination] or in the form of abaha [i.e., mubah] which includes abaha acts" (Sadr, 1996, p. 204).

According to Sadr (1996), the scope of rulings is divided into two categories. The first category includes fixed rulings which are clear and are expressed in the form of obligation and sanctity are considered immutable laws and are inviolable for the Islamic ruler. The second category, which is in the scope of mubah and there is no definite opinion about their obligation or sanctity, which are the very tarkhisi cases, are referred to as mantaqah al-faragh of sharia, and the legislature must legislate on such situations based on the expediencies that it recognizes provided that no contradiction to the constitution and Sharia frameworks occur. Hitherto, the objection that some people make to Sadr's theory is that contrary to his approach, the scope of the written rulings (those rules of sharia for which there exists text) which are included in the scope of obligation and sanctity can also be considered as a place of ijtihad [i.e, an Islamic jurist can give a new fatwa on a fixed ruling], and this can be done by the legislator's recognizing of expediency and it is possible due to the secondary and governmental decrees. Therefore, not only in Sharia tarkhisi cases, but also in the area of primary rulings, there can be legislation regarding ijtihad, and this is compatible with Ayatollah Khomeini's approach and widens the scope of the Islamic government's powers (Ka'bi, 2017). Another point is that in any case, there is a difference in a fatwa in the details of some fiqhi rules, and forcefully, compliance is not always logical, therefore, in the legislative position, especially in the legal and criminal fields, the single opinion of the lawmaker becomes relevant.

The sum of what can be inferred from the two theories examined is that there is a wide field for the legislation of the legislative body as a representative of the people, and many legislative issues are also within the scope of mubah. Therefore, besides loyalty to the fixed ahkam (rulings) and religious texts, there exists a wide field for lawmaking by the people's representatives. This again makes it possible to expand the two-element theory, i.e. the Islamic element and the democratic element, yet, this does not mean that the scope of mubah is outside the scope of the Sharia, rather it is a wide field of action for the people

and their representatives. Of course, Shahid Beheshti's aforementioned opinion about guaranteeing the objectives and outlines of the Qur'an and the Sunnah, which is one of the most important factors in the legislation of justice including equity and equality, should not be forgotten, and naturally guaranteeing the objectives of the Islamic Republic in the constitution is also a legislative red line. Of course, Ayatollah Khomeini's theory about expediency-based fiqh or fiqh of expediency, and ahkam-e hokoumati or governmental rulings is more complete and within the framework of creating wide possibilities for the government to pursue its goals and resolve conflicts with the primary rulings, which is not the scope of this article.

5. The fifth article: The divine element of legitimacy

Ayatollah Ruhollah Khomeini, the main theoretician and the revival of valiy-e faqih in the contemporary age, before the Islamic revolution, expressed his views extensively in the lessons related to valiy-e faqih, which is reflected in his book of valiy-e faqih. However, the issue of velayat al-faqih had not been mentioned in the initial draft of the constitution and it was brought up with the proposal of the first group of the final review assembly, after discussion and review of the proposal and finally in the public session of the aforementioned assembly (Vara'i, 2007). From a historical point of view, it is necessary to mention that before and after the assembly of the revision of the constitution, the necessity of the existence of the velayat-e faqih article had been emphasized by some figures and groups and it had also been stipulated by them that the constitution without this principle would have lead to a secular government. The fifth proposed article announced that during the absence of Imam Mahdi (May the Exalted Allah hasten his reappearance), in the Islamic Republic of Iran, the administration and leadership of the nation rests with a just and pious jurist, who is aware of the times, brave and resourceful, and the majority of people have recognized and accepted him as the leader, and if one person does not reach to such acceptance by majority, a council composed of highly qualified jurists will take charge of it. The method of forming this council and appointing its members is determined by law.

5-1. Supporters' explanation of the article

The supporters of the article, who were the majority of MPs and the defenders of fiqh-based Islam, referring to the position of velayat-e faqih during the time of greater occultation [of Imam Mahdi], considered the principle of the velayat-e faqih as the guarantor of the Islamicity[1] of the government, and considered the constitution without it to be invalid and distorted from the viewpoint of the

1. What Islam demands

Islamic nature of the system to the extent that the speaker of the parliament of the time Ayatollah Montazeri mentions this issue: "We will not approve the constitution that does not include the issue of the velayat-e faqih as well as the issue that all laws are based on the Book[1] and the Sunnah[2], rather we will approve the constitution whose criterion is velayat-e faqih." (I.R. Iran. Parl., 1985, p. 107) Another representative employing the concept of 'olel 'amr[3] in the 59th verse of Surah Nisa[4] and by mentioning the point that whomever God has given him delegation will be in the position of 'olel 'amr, says: "Holding the belief to the necessity of obeying valiy-e faqih as the Imam's [Imam Mahdi] deputy will be a strong power and authority for us, and many government affairs, including customs, taxes, and duties without the discretion of the Imam [Imam Mahdi] and valiy-e faqih as his deputy, are haram[5], and the approval of the parliament without the approval of faqih is not a must for the people" (pp. 943-944).

Explaining this article, Beheshti, the vice chairman of the assembly of the revision of the constitution says: "Basically, social systems are of two types, a group of societies and social systems that rely on only one article, and that is the people's votes without any conditions. these societies are liberal and they claim to have such a government, while the critics believe that people in these societies think they are free, but the capitalist system is invisible, which directs the will of the people in the direction of their interests. Therefore, socialist societies do not consider liberal societies to be democratic. The second group is societies in which people believe in a school or ideology, choose a school freely, and limit themselves within its framework. Our people are Muslim and our form of government is a republic. It is Islamic, not a democratic republic (in the first sense), so we say that according to the rules and regulations of Islam, the administration of the society should be in the hands of an informed leader, who is not only a scholar of Islam, but also a faqih, and this is actually [because such a person is] the first choice of the people" (I.R. Iran. Parl.,1985, pp. 380-381). This statement of the vice chairman of the assembly of the revision of the constitution can be seen as an expression of religious democracy that is compatible with democracy limited to Sharia (limited democracy) and in our opinion democracy limited to Sharia rules over the constitution of the Islamic

1. The Quran
2. The traditions and practices of the Islamic prophet Muhammad, Ahl al-Bayt, and the Infallible Imams
3. Those vested with authority
4. "O you who have faith! Obey Allah and obey the Apostle and those vested with authority among you. And if you dispute concerning anything, refer it to Allah and the Apostle, if you have faith in Allah and the Last Day. That is better and more favorable in outcome."
5. Forbidden or proscribed by Islamic law

Republic. But it seems that his explanation of liberal governments, as governments in which public votes have no conditions or limitations and as a result absolute democracy combined with radical pluralism is the rule, is not very accurate; since, first of all, liberal systems promote a value system and are tied to a fundamental premise, namely secularism, and secondly, liberalism is based on a moral system and specific anthropological assumptions. For this reason, liberal systems cannot be considered devoid of ideological attributes (Tahiri, 1387, pp. 66-70).

Another supporter of the article, argues that all schools seek to present the ideal model and it is natural that all the models presented by materialistic schools are inferior to the model presented by the school of wahy (revelation) and explaining the issue of velayat-e faqih, says: "The Islamic government model is the guardianship and the imamate of the ummah, and there is no doubt about this principle, but the argument is that the realization of this matter will be in the hands of those who are more familiar with the religion and are experts in Islamic issues, so velayat-e faqih is the guardianship of an expert, not the guardianship of someone who wears clerical clothes, i.e., the criterion is jurisprudence and expertise, not clothing" (I.R. Iran. Parl., 1985, pp. 341-343).

5-2. Arguments of the opponents and answers to them

Some of the arguments of the opponents of the article are based on the inconsistency of velayat-e faqih and the sovereignty of the people, and we discuss these arguments and their answers in this part of the study.

The opposition representatives focused on the fact that velayat-e faqih has not been proposed in the draft of the constitution and national sovereignty has been mentioned, and thus they considered the inclusion of this article dependent on the existence of the Constituent Assembly (I.R. Iran. Parl., 1985, p. 404). In response to this objection, the vice chairman of the assembly defends the article as follows: "This assembly is not different from the constituent assembly, only its members are less, this article has been collected and designed out of the four thousand theories and proposals of the people that have reached the secretariat of the parliament or have been published in the newspapers. After the publication of the draft, among the received comments, they emphasized the point why they did not include this article in the constitution" (I.R. Iran. Parl., 1985, pp. 377-379).

The contradiction of this article with the exercise of sovereignty through public votes, which was foreseen in the third article of the draft and approved in the final text of the sixth article, and the contradiction with the articles related to the council, was another objection raised by the opponents of this article. In response to this criticism, addressing the opponent, the vice chairman of the

assembly emphasized that this claim is not correct and added: “Note that in scholastic societies, people choose the school first, and by following the school, they make a commitment to it, and thus their following choices and decisions cannot be a violation of the commitment that has already been accepted. Regarding Islamic societies, we stipulate that after the members of the community have accepted the school of Islam, one of the requirements for accepting the school of Islam is that the position of the imamate of the Ummah must include these qualities, and the fifth article expresses this, and we just said then that the person must be accepted by the majority of the people, so you can see that the sixth article is not only not contrary to the fifth article but also expresses the role of public election after the first election stage” (I.R. Iran. Parl., 1985, p. 406).

An important point in the arguments of the proponents is the justification of velayat-e faqih through the authority and guardianship of feqahat (jurisprudence; state of being faqih) as well as that of Sharia. They do not give the guardianship to a person, but to the characteristics that a would-be guardian jurist must have to realize the rule of Sharia. Another argument is that velayat-e faqih is the desire of the majority of Iranian people, and the link between the leadership and the nation during the struggles [against tyranny] shows that there is no gap between the sovereignty of the nation and velayat-e-faqih. Furthermore, members of the Assembly of Experts for Leadership who are responsible for choosing the leader are elected by the people themselves.

Some other opponents, recalling the danger of religious tyranny, considered velayat-e faqih as a factor in turning the clergies into the ruling class of the society (I.R. Iran. Parl.,1985, p. 557). This point was also a repetition of the previous concern that the proponents had already answered by introducing velayat-e faqih as the guardianship and leadership of an expert in religion, and clarified that no one can impose himself on the people with the title of righteous faqih, since a [real] faqih is recognized and accepted by the people. Notably, they suggested that the condition of expertise or the rule of experts does not mean tyranny. In general, the goal and conclusion of the compilers are from velayat-e faqih under the political system chosen by the nation and promised by the founder and great leader of the Islamic Revolution and in accordance with the system of articles of the constitution and guaranteeing the guardianship of the Sharia in the political system and the construction of power, which is understood in the framework of two-element legitimacy deduced from the fifty-sixth article.

Although the scope of powers and the position of the velayat-e faqih is beyond the fifth article, the understanding of the intentions and the constitution legislator's definition of the role and position of velayat-e faqih in establishing

power shows that the codifiers of the constitution did not consider valiy-e faqih as the absolute power and the sole authority of legitimacy, but as guardian and frontier guards of Sharia in the Islamic Republic. They believed that the base should be the guardianship of fiqh and Sharia, and as the study will discuss later, along with velayat-e faqih, they also considered the people's vote as a part of the mechanism of legitimacy. Finally, the fifth article was approved as follows, "During the Occultation of the Wali al-Asr [Imam Mahdi] (may God hasten his reappearance), the wilayah (guardianship) and leadership of the Ummah devolve upon the 'adil (just), muttaqi (pious), courageous, resourceful, and thoughtful faqih, who is fully aware of the circumstances of his age; and if no faqih gains majority [or acceptability by the people], the leader or leadership council including foqaha who possess the aforementioned qualifications will assume the responsibilities of this office in accordance with Article 107." (Constitutional Council, 2021). In the revision of 1989, by removing the 'leadership council', the determination of the leadership role has been entrusted to the council of experts based on the 107th article[1].

6. The sixth article: The Public Element of Legitimacy

The sixth article of the constitution is another important piece of the puzzle of legitimacy in the constitution of the Islamic Republic. As mentioned earlier, before and after the victory of the revolution, Ayatollah Khomeini had repeatedly talked about the centrality of the role of the people and their votes in the Islamic Republic. The sixth article is the most important article regarding the role and position of the people and the crystalization of the popular element of legitimacy in the religious democratic system. There is a lot of debate regarding the position of people and public opinion in religious foundations and from the perspective of the Quran, Sunnah, and fiqh, but in line with the topic and purpose of this article, the researchers discuss the position of people and public opinion in the system of legitimacy from the perspective of annotated

1. Article 107: After the demise of the eminent marji' al-taqlid great leader of the universal Islamic revolution, and founder of the Islamic Republic of Iran, Ayatullah al-'Uzma Khomeini - who was recognized and accepted as marji' and Leader by a decisive majority of the people, the task of appointing the Leader shall be vested with the experts elected by the people. The experts will review and consult among themselves concerning all the fuqaha' possessing the qualifications specified in Articles 5 and 109. In the event, that they find one of them better versed in Islamic regulations, the subjects of the fiqh, political and social Issues, or possessing general popularity or special prominence for any of the qualifications mentioned in Article 109, they shall elect him as the Leader. Otherwise, in the absence of such superiority, they shall elect and declare one of them as the Leader. The Leader thus elected by the Assembly of Experts shall assume all the powers of the wilayat al-amr and all the responsibilities arising therefrom. The Leader is equal to the rest of the people of the country in the eyes of law (Constitutional Council, 2021).

deliberations of the constitutional revision. Article 6 of the Constitution reads "In the Islamic Republic of Iran, the affairs of the country must be administered based on public opinion expressed by the means of elections, including the election of the President, the representatives of the Islamic Consultative Assembly, and the members of councils, or by means of referenda in matters specified in other articles of this Constitution" (Constitutional Council, 2021).

6-1. The draft of the constitution and the position of the article

In the draft of the constitution, the current sixth article was seen in the form of the third article which expressed that public votes are the basis of government, and according to the orders of the Holy Qur'an[1], the affairs of the country should be consulted. It can be clearly said that one of the prominent and effective approaches in the constitution, whether in drafting the constitution or in the constitution approved in 1979, is to focus on the concept of council or a sort of Islamic councilism, which was also the focus of some thinkers at the beginning of the Islamic revolution, and from this perspective, it has left a deep impact on the constitution and we have seen the expansion of this concept widely in the constitution. Consultative democracy, both in the Sunni and the Shia world, is considered very significant by some thinkers who believe in religious democracy, to the extent that one of the contemporary Shia jurists and thinkers Sheikh Mahdi Shams-al-Din believes that the legitimacy of political ruling for a non-infallible ruler and domination in the general affairs of the society will by no means be approved unless they are based on the basis and origin of the council (Mir Ahmadi, 2014). However, the group examining the third article of the draft in the Assembly of the Final Review of the Constitution decided to raise this issue in the form of two separate articles; i.e., the sixth and seventh[2] (Vara'i, 2007).

6-2. Supporters' explanation of the article

Part of the issues that the proponents of the article stated were related to the defense of the separation of the two issues of government institutions' reliance on public votes and the formation of councils in the form of two separate articles. The designers of the separation of the third article into two separate

1. "… and consult with them (people) in the affairs …" (3:159); "… and they do their works based on consulting one another …" (42:38).
2. Article 7: By the command of the Qur'an contained in the verse ("Their affairs are by consultations among them" [42:38]) and ("Consult them in affairs" [3:159]), consultative bodies - such as the Islamic Consultative Assembly, the Provincial Councils, and the City, Region, District, and Village Councils and the likes of them - are the decision-making and administrative organs of the country. The nature of each of these councils, together with the manner of their formation, their jurisdiction, and the scope of their duties and functions, is determined by the Constitution and laws derived from it (Constitutional Council, 2021).

articles, believed that the issue of consultation and council is different from the article on the government's reliance on public votes, and the narrative references of the two are also different; Therefore, these two issues should be separated from one another. Relying on public votes in republican systems is a clear matter and this is quite different from the issue of the councils. It is obvious that the government takes power from public votes, not from bayonet and force (I.R. Iran. Parl., 1985, pp. 388-400). It seems that considering the slogans of the Islamic Revolution and people's voting for the Islamic Republic system in the 1979 referendum and the explanation of the nature of the future system, the principle of the people's role and public opinion has been a clear issue for the majority of the representatives.

6-3. Opponents' arguments and the answers to them

Some opponents, while emphasizing the authenticity of the people's votes in the legitimacy of the government, believed that the system's reliance on public votes in this article is in conflict with velayat-e faqih, and practically, with the existence of the fifth article, the sixth and seventh articles are rejected. (I.R. Iran. Parl., 1985, pp. 404-403). In response to this objection, which was based on the belief in the legitimacy of the people and the negation of velayat-e faqih as a sharia pillar of legitimacy, the Deputy Speaker of the Majlis of the time stated that velayat-e faqih principle is part of the religious requirements of the Islamic government, and on this basis, the leader must be qualified to possess some specific characteristics. He, then, emphasized that the popular side or dimension of the system will be protected because valiy-e faqih must be accepted by the majority of the people. Therefore, there is no conflict between the fifth and sixth articles. (p. 406). Finally, the sixth article was approved with fifty-four votes.

7. The one hundred and seventh article: Detection or selection of valiy-e faqih

Given that the explanation of this article is an important piece of the puzzle of legitimacy in the Constitution, this phase of the study examines it briefly. As mentioned earlier, the issue of velayat-e faqih had not been presented, nor had it been discussed in the draft, and its all related articles were discussed in the Constitutional Review Assembly, one of which is the 107th article. The draft of the above-mentioned article in the fifth group of the constitutional review assembly in the form of the eighty-fourth article suggests that to realize the principle of wilayat al-'amr; i.e., guardianship of the Ummah affairs and the imamate [leadership] of the Ummah, the subject of the fifth article of the same law, which is the guarantor of the Islamicity of the social system of Iran and it ends the duality between Sharia government and customary government, the

leader or the leadership council in the administration of the country's affairs assumes the responsibilities that are determined in the related articles that follow later (I.R. Iran. Parl.1985).

7-1. Supporters' explanation of the article

Those in favor believed that since the conditions and quality of determining the leadership are not provided in the fifth article of the constitution, it is necessary to specify the process of determining the leadership in the form of one or more other articles. Some of the supporters, while implicitly referring to the fact that the identity of the Islamic Republic system is both divine and popular, believed that whether the conditions of leadership are gathered in one person and thus there is a possibility of introducing an individual valiy-e faqih, or there is a need to form a leadership council, the people should elect some experts whose duty is to determine the leader or leadership council. Another point is that what the drafters of the above-mentioned article had in mind is the issue of interpretation and engineering of velayat-e faqih in a way that ends the dual dispute of the customary government and Sharia government, and thus it ends the disputes related to divine legitimacy and popular legitimacy (I.R. Iran. Parl. 1985, pp. 1069-1070). This meaning is crystallized everywhere in the Constitution, especially the fifty-sixth article. Another supporter, while defending velayat-e faqih, referred to the credibility of the expert's opinions as trustworthy references and referred to the logic of the social contract by explaining the fact that, by giving part of their freedoms to the government, people choose the government to ensure good governance and move for the happiness of the nation. The mentioned supporter believed that a kind of social contract could be established in the relationship between the people and the Islamic government (pp. 1092-1093).

7-2. Opponents' arguments and the answers to them

The most important objections of the opponents were not actually to the principle of velayat-e faqih since they all agreed on the principle itself, but their objections were to the uncertainty of both the selection mechanism and the limits of the powers of valiy-e faqih for neither the quality of determining valiy-e faqih nor the limits of the authority of valiy-e faqih were defined putting the future situation in an aura of uncertainty (I.R. Iran. Parl. 1985, pp.1065-1067 and p. 1087). In response, the supporters believed that the leader's [valiy-e faqih's] conditions, powers, and duties would be reviewed in future articles, so there would be no problem in this regard (pp. 1089-1090). The doubt of the conflict between velayat-e faqih and the national sovereignty was raised again, and finally, it was decided to form a leader or a leadership council for the time after Ayatollah Khomeini [the valiy-e faqih of the time] and the future of the system.

7-3. Constitution revision in 1989

During the revision of the constitution[1] in 1989, the conditions foreseen for leadership, i.e., determining the leader changed, such as the removal of the leadership council and monopoly in individual leadership, the addition of the word 'mutlaqeh' (absolute) to the term velayat-e faqih and thus introducing the new term 'velayat-e mutlaqeh faqih', and the removal of the condition of marja' iyyat[2], but in the revision of the aforementioned article, determining valiy-e faqih by the Assembly of Experts for Leadership was emphasized. In the revision council, issues such as the removal of the condition of being a religious authority, the removal of council leadership, the clarification of the conditions for the supremacy of the proper individual for valiy-e faqih over other foqaha and the transfer of the issue of the former Article 112 regarding the equality of leadership with other citizens before the law were discussed (Vara'i, 2007).

Regarding the selection of the leader being limited only to the assembly of experts and concerning the revision of the method of determining the leader in the 177th article, the relevant commission considered reasons such as the lack of clarity in the mechanism of choosing the faqih appointed by the people and the impossibility of distinguishing the Sharia conditions contained in the article among the reasons for the proposed changes (I.R. Iran. Parl., 1990, p. 655). On the other hand, some other members considered the removal of the possibility of direct election of the leader by the people as weakening democracy and the people's role in the system (p. 1225). Another representative suggested that determining the leader should be done by the experts, but he suggested that the possibility of direct reference to people's votes should be also considered in necessary circumstances. The main point about the legitimacy of the revision of this article is that, despite the removal of the condition of marja'iyyat and the fact that there were detailed discussions in this field, no dispute has occurred in the revision council about the appointment and selection of valiy-e faqih, nor has fundamental dispute occurred regarding whether the Assembly of Experts for Leadership discovers or chooses the most proper valiy-e faqih, and thus the subject of choosing valiy-e faqih by experts which is fully in line with the republican system and religious democracy has not been a point of dispute; Because, the practical effect of the selection bound by the conditions of the 109th article and the discovery bound by the mentioned conditions are not different. In the same way, in the discovery theory, the recognition and the independent

1. The Constitution of the Islamic Republic of Iran was adopted by referendum on December 2 and 3, 1979, and went into force replacing the Constitution of 1906. It has been amended once, on July 28, 1989 (Constitutional Council, 2021).
2. Status of being a religious reference or religious authority (as a source of emulation for Twelver Shiites)

opinion of the members of the Assembly of Experts for Leadership in the position of matching the example[1] [27] with the Sharia conditions are pivotal. Therefore, about determining valiy-e faqih in this article, it can be said that the two required elements or pillars of legitimacy have been taken into account, and the leader qualified by sharia in the 199th article is chosen by the representatives of the people within the framework of an indirect and two-level election, which includes both sharia-based selection and people's mediated election and so it confirms divine-popular legitimacy. Finally, the amendments of Article 107 were approved by removing the condition of marja'iyyat and the council leadership, handing over the power of choosing the leader to the Assembly of Experts for Leadership and clarifying the term "determining valiy-e faqih" by the said assembly and because this selection is bound by the sharia and legal conditions of the article 109. Hence, the emergence of the two-element legitimacy, i.e., divine-popular legitimacy is also evident in this article.

Conclusion

The present study attempted to examine the fundamental issue of legitimacy in the constitution and the constitutional law system of the Islamic Republic of Iran by analyzing the detailed perspective of the Annotated Deliberations of the Assembly of the Final Review of the Constitution of the Islamic Republic of Iran (1985). As such, first, the researchers examined the theoretical foundations of legitimacy and assessed the possibility of two-element legitimacy, and then analyzed that in article 156 as the super article of legitimacy in the constitution. Subsequently, articles 5 and 6 as two important articles in connection with the two elements of legitimacy were examined, and finally, in the framework of two-element legitimacy, article 107 was interpreted. To sum up, it should be said that in the process of approving the constitution, the representatives and drafters avoided looking at democracy as an inherently secular concept and did not consider this form of governance incompatible with religion, and from the legal and normative point of view, they assumed the achievement of religious democracy possible by considering the framework of democracy restricted to sharia or guided and scholastic democracy. Perhaps it can be held that from these two elements of legitimacy in the framework of religious interpretation, one is a manifestation of God's rights and divine sovereignty, and the other is based on people's rights. Therefore, legitimacy in the system of the Islamic Republic of Iran based on the structure of the constitution cannot be considered as merely declaring the loyalty of the people. In this regard, the legislator of the constitution has provided the possibility of realizing religious democracy in the constitution of the Islamic Republic with the divine-popular interpretation of

1. An individual that would be announced as valiy-e faqih

legitimacy. This two-element legitimacy is present in all parts of the current constitution, and the expansion of this approach has made it possible to defend religious democracy in the constitution of the Islamic Republic. Another point that should be mentioned is the religious element and the divine element of the legitimacy of the president, which according to Article 110 of the constitution, is bound to signing the decree [of presidency] by the leader. Furthermore, in the case of the Islamic Consultative Assembly, the supervision of the foqaha of the Guardian Council guarantees the sharia/divine element, especially since article 93[1] [28] of the constitution deems the parliament to be invalid without the presence of the Guardian Council except for two cases, and in the case of the head of the judiciary, with his appointment by the leader who is himself elected by the people's representatives in the Assembly of Experts for Leadership, the element of popular legitimacy of the head of the judiciary will be indirectly preserved. Finally, as we stated in the explanation of the most challenging level of the issue, i.e., two-element legitimacy in the legislative field, this two-element legitimacy is never, even at the legislative level, as the critics think (Kodkhodaei and Javaheri, 2011, p.116) will not lead to a dual conflict between sharia and customary law, because there is the capacity to accept this two-element legitimacy under the sharia legislative system in the aforementioned theories presented by Shahid Sadr and Ayatollah Amoli, and the approaches taken by the late Ayatollah Khomeini regarding the expansion and dynamicity of ijtihad and ahkam-e hokoumati.

1. The Islamic Consultative Assembly does not hold any legal status if there is no Constitutional Council in existence, except to approve the credentials of its members and the election of the six jurists on the Constitutional Council (Constitutional Council, 2021).

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