

The Study of Structural Vulnerability of Islamic Councils in Iran's System of Law

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Abstract

Local institutions of Iran have a long history in having rules and regulations. But contrary to this, achieving the desired goal has always faced challenges and various historical, political, cultural, economic and social barriers. In the meantime, as a local institution, the structural and organizational barriers faced by Islamic councils can be separately taken into account in terms of different rules. The absence of having an appropriate status in the Constitution and lack of necessary features for a local entity in ordinary law are among the most important barriers encountered by Rural and Urban Islamic councils in Islamic Republic of Iran. In this respect, it seems necessary for the Guardian Council to provide a different interpretation of the Constitution befitting the status and dignity of Islamic councils and employ the current capacities of councils as well as Legislature to have its efforts in enactment of appropriate laws.

Keywords: Islamic Councils, legal entity, administrative decentralization, structural barriers of councils

1. Introduction

In spite of enjoyment of Rural and Urban Councils of numerous laws and regulations throughout the years before and after Islamic revolution, it should be acknowledged that these entities still suffer from shortcomings and weaknesses, as a result of which the way to achieve the original philosophy of formation of the so-called councils is blocked. Regardless of various political, historical, cultural, social and economic factors and barriers, what is intended in this article is legal barriers facing councils on their way to succeed structurally and organizationally. A brief look at the history of formation of local institutions before the Revolution as well as Islamic Councils after the revolution, is indicative of this fact. The establishment of local institutions depended entirely on government policies in that specific period and time. In other words, development of these institutions did not emerge from a legal obligation, rather resulted from the attitude of the governors on this issue. Hence, in light of experiences of formation of local institutions in different periods from the beginning till now, it should be stated that major barriers and factors of failure in proper establishment of local institutions in Iran belong to non-legal barriers. According to the subject of this article, we try to analyze some of the so-called failures from structural perspective in various laws. The questions raised in this regard are: what are the structural barriers and challenges facing Councils in the Constitution and Ordinary law? And, what are the solutions for overcoming such barriers and challenges? Thus, in order to respond to these questions, initially, necessary features of local institutions are expressed, then, the structural barriers facing Islamic Councils in the Constitution and Ordinary Laws on councils are studied. Finally, some solutions for these barriers are provided.

1.1 Necessary Features of Local Institutions

For the local elected institutions such as Islamic Councils to be structurally recognized as a Local institution, they should be characterized by the following features:

1.1.1 Having Legal Entity

Legal entities of Public laws such as councils are required to be recognized by legislator; thus, their identification is obtained according to Article 587 of Commercial Code¹, and their formation need no registration. Having legal entity provides the local institution with administrative, financial and judicial autonomy, also it becomes

¹- The Article 587 of Commercial Code: Once created, state and civic institutions without the need of registration, have Legal entity.

independent of other institutions such as government.² It is obvious that, without enjoying autonomy in the above fields, local institutions will not be able to pursue their objectives. The autonomy of the so-called institutions are relative and this is more obvious from financial view. The absolute autonomy of these institutions is inconsistent with the extensive nature of the government which is based on unitary governance. For example, absolute financial autonomy is not possible and such autonomy is not pleasant to the central government. Therefore, the central government should always participate in funding local institutions.

1.1.2 Having Administrative Decentralization

The complexity and abundance of affairs in national and local levels have caused difficulties in governing them, so that governments cannot fulfill their duties at local level. This can be clearly seen in vast and highly populated countries.

“In a small country, whose affairs, even local affairs, can be administered by the central government, the formation of local institutions is not required. Central government needs the help of local institutions when the given country is vast and highly populated.”³ Moreover, increase in government’s duties leads to lack of ability in managing them; consequently, the administration of some of which will be left to local institutions and organizations. In other words, “increase in central government’s responsibilities will lead to increase in its administrative duties; and similar to large companies that decentralize the administration of affairs, central government, as well, allocates much of its authorities to various levels of local institutions.”⁴

Local institutions should be a true example of administrative decentralization. Decentralization is considered as a way of governance in various fields. Administrative decentralization means managing the local affairs by the elected local institutions. In this way, these institutions make decisions about local matters within their scope of powers delegated to them by the central government, then the decisions will be implemented. Applying decentralization system requires that the central government, within the limits of the Constitutions and ordinary laws, entrust making decisions about local matters and implementing the related decisions, to local institutions. In this regard, the legislator is obliged to specify the boundaries of local affairs in comparison with national ones.

2. Islamic Councils’ Structural Barriers

Structure and formation of Islamic Councils, in terms of different consultative categories, so far have had an evolutionary progression. Although, at the beginning of the Islamic Revolution we solely witnessed the formation of Rural Councils, after two decades, especially from 1377 onwards, we saw formation of different consultative categories to the level of the Supreme Council of Provinces. Despite the formation of Islamic Councils in this manner, the so-called institutions, due to influence of the Constitution and ordinary laws, have structurally suffered damages and obstacles.

2.1 In the Constitution

Principles 6 and 7 as well as the chapter seven of the Constitution (Principles 100 to 106) are dedicated to Islamic Councils. It should be acknowledged that the main structural obstacle facing Islamic Councils must be known to be in the Constitution. By studying the above Principles one can infer the inherent contradiction of these Principles in case of status of Islamic Councils. While the Principle 6 of the Constitution has assigned Islamic Councils as equivalent of legislature and an executive power, and in addition to which, the Principle 7 has announced the Councils as directing and decision-making institutions, the Principle 100 of the Constitution considers the Islamic Councils as the supervisor of the administration of affairs. Finally, by studying the Principle 103, one encounters the lack of proper status of Councils in connection with organs and state officials.

2.1.1 Principle 6

“In Islamic Republic of Iran, country’s affairs should be administered based on popular vote, i.e. through election: the election of the president, members of the parliament, Council members and so on, or it is determined by means of referendum in cases specified by other Principles of the Constitution.”

As it was noted above, in this Principle, the Council members are considered as equivalent of Presidency and members of the Islamic Parliament, and this indicates the high status of this entity in the Constitution. According to Principle 6, in addition to the election of President and members of the Islamic Parliament etc., governing of country’s affairs on the basis of popular votes should also crystalize in election of Council members. Secondly,

²- To prevent prolixity, the detailed discussion of the characteristics of local institutions (legal entity and administrative decentralization) should be avoided.

³- W. Eric Jackson, *Local Government in England and Wales*, 1951, p.11.

⁴- J Owens and G Panella, *Local Government*, 1991, p.59.

what can be inferred from this Principle is that Islamic Councils, as the symbol of popular vote, must play their role in governing country's affairs. In other words, administration of the country based on popular vote is done in various ways. One of these ways is the election of council members so that the so-called councils can run the country with support of popular votes.

The importance of popular votes and the role of public institutions such as Islamic Councils and Islamic Parliament in running the country can be deduced from the detailed proceedings of Parliament of final review of the Constitution during developing the Principle 6:

"...with respect to Islamic rules and in accordance with what the title of Islamic Republic demands, it is popular vote which plays a fundamental and effective role in governing the country's affairs. In those days when we were discussing the quality of the government and its management, where it came to the issues concerning this quality, we explicitly and emphatically states that this is a popular government that can be regarded as safe and successful, which is accepted and supported by people. It is the very principle which was emphasized during the Revolution. It is necessary to put emphasis on this part regarding the general principles of the Constitution and have an independent principle regarding popular vote in running country's affairs."⁵

"Recognition of Councils as a governing body" can be observed immediately in Principle 7 of the Constitution.

2.1.2 Principle 7

'As directed by The Holy Qur'an 'whose affair is [determined by] consultation among themselves' and 'consult them in the matter', Councils, Islamic Parliament, provincial, urban, town, district, sector, rural councils and so on are the elements of decision-making and governance in the country. The cases, formation and scope of authorities and responsibilities of Councils are determined through this Principle and the laws derived from it.'

What can be derived from the Principle 7 is that Islamic Councils along with Islamic Parliament are accounted as a decision-making body, and consistent with other administrative organs of the country, they are considered as governing bodies. The content of the Principle 7 is so clear that the members of the Parliament of the final review of the Constitution ratified⁶ it without any opposing opinion and consequently any agreed opinion⁷.

2.1.3 Principle 100

"For rapid advancement of social, economic, civil, health, cultural, educational and other welfare plans through collaboration of people and with regard to local demands, the administration of each village, region, city, town or province takes place under consultative supervision called village, region, city, town or province Council whose members are elected by the residents of that region..."

Having studied the Principle 100 of the Constitution, one realizes the status of Islamic Councils as "supervisors of administration". Pursuant to this Principle, state institutions and central government officials, handle the affairs within country divisions, and Islamic Councils as well, monitor the affairs in order to advance various plans and matters.

In a comparative analysis of Principles 6, 7 and 100 of the Constitution, one can clearly observe the contradiction among these Principles about the status, structure and formation of Islamic Councils. While Principles 6 and 7 of the Constitution announce Islamic Council as a high status, decision-making and administrative entity, Principle 100 of the Constitution reduces this status to a successor and supervisor entity.

In this case, consideration of proceedings of the Parliament of final review of the Constitution does not deliver a proper understanding of how Principle 100 has been ratified. Also, one cannot get to a definite answer about how members of the Parliament, so far, have not realized the contradiction of the principles in relation to the status of the Islamic councils. Is it happened due to hastily drafting of the Principles of the Constitution? Can it be said that members of the Parliament have not taken a holistic view toward Principles of the Constitution?

What can be inferred from the negotiations over the Principle 100 is that, in their negotiation, members of the Parliament have considered the Councils as "administering" entities and basically, throughout the negotiations over this Principle, they have not used the term "supervision" in any way.

As an example, some contents of these negotiations are provided:

1) "We divide the governance into two parts: one is the national sovereignty which is indivisible, and there is only

⁵- The Detailed Proceedings of the Parliament of Final Review of the Constitution, Vol. 1, Publications of The Office of Cultural Affairs and Public Relations of The Parliament, 1st Publication, 1985. P.400.

⁶- *ibid.* pp. 408-9

⁷- Basically, when the opposition does not speak, there is no need of the agreed to speak.

one sovereignty and that is Iran, upon the unity of this national sovereignty we all agree. But another part is the administrative sovereignty about which people want to know what the authorities of these administrations in states and provinces are. The issue is how to employ such authority... By authority of administrative sovereignty they want to know the extent of it. They claim that National Assembly and central government determine the sovereignty they want to allocate to themselves and let us free in what remains, since we are more comfortable with our region and our mentality and we are more familiar with our culture; we know what to do... people need to feel and know that this is not the previous regime and the solution is to designate the scope of the power of states, provinces and the whole people of the region. However, these authorities must be designated by Councils...”⁸

2) “In the former Constitution, we had three Principles 90, 91 and 92 of provincial associations which were not implemented, why? Because of the dictatorship, but the current government is an Islamic republic government... let states have some opportunity and authority, and since up to now people have been deprived, give them a chance and let them manage their own matters.”⁹

3) “Emphasis of the Revolution Leader on the issue of Councils might be unprecedented. During his residency in Paris one of the proposed issues was that of Councils. Once this issue was raised, his opinion was that upon the fall of the former regime, regional councils must take control of their regions... he commanded that required studies on councils take place to write something for them, and upon the fall of the regime, consultative system will take its place, but after the fall of the regime, an extraordinary issue emerged and consultative system was not executed. Later, he ordered to expedite this process...”¹⁰

4) “The issue of councils means that, at the lowest level i.e. in the form of village council and collective decision-making, opinions must be transferred to a higher level and also the power must be transferred from government to people, who are the main owners of the power. People must freely determine their own destiny. No one is opposed to this and nobody doubts about it.”¹¹

In this respect, Imam Khomeini’s command¹² on establishment of Islamic Councils dated 29. Apr. 1979 addressing Council of Islamic Revolution is very remarkable¹³:

“In order to establish a democratic government in Iran and the sovereignty of people on their destiny, which is one of the necessities of Islamic Republic, I deem it compulsory for you to promptly prepare the executive regulations of Councils for administrating local affairs of villages and cities throughout Iran, and following its ratification convey it to the government for immediate implementation.”

2.1.4 The Principle 103

“Governors, legates, prefects and other state officials appointed by government must abide by all decisions taken within the scope of authority of councils.”

Now, the question is that whether the so-called state officials, with respect to the above Principle, are obliged to implement resolutions and decisions of the councils? Here, there is a challenge in case of the meaning of the term ‘Consideration’. Consideration is an ambiguous concept. It means that state officials can not disagree with Council’s decisions or in addition to lack of disagreement, ‘enforce’ them. In Parliament’ negotiation of final review of the Constitution, some suggested that the term ‘Enforcement’ follow the term ‘Consideration’¹⁴, however, this proposal was not approved. Uncertainty in the meaning of the term ‘Consideration’ leads us toward lack of appropriate status of Councils among governmental institutions, in a way that government becomes capable of choosing between lack of opposition and implementation of councils’ decisions. This eventually causes tension in the relationship between councils and government on implementation or lack of implementation of councils’ decisions.¹⁵

2.2 In Ordinary Laws

⁸- The details of the proceedings, Vol.2, p.989

⁹- *ibid*, p.990

¹⁰- *ibid*, p.991

¹¹- *ibid*, p.992

¹²- The commands of the presidents of a country are accounted as a source of law for that country.

¹³- The emphasis is due to the fact that this command is issued before the opening of parliament of the final review of the Constitution (August 1979). Since the commands of the country are regarded as sources of law, this command could be the example of the work of members of the parliament in developing the principles related to the Islamic Councils. It should be noted that Imam Khomeini pointed to the role of councils as “administrating local affairs” in this command.

¹⁴- see: The Detailed Proceedings of the parliament of Final Review of the Constitution, vol. 2, p.999

¹⁵- note: *ibid*, p.1000

With respect to Islamic Councils several ordinary laws¹⁶ have been ratified. The latest legal regulation which was approved in this regard in 1996 is “Law on formation, duties and election of Islamic Councils of the country and selection of mayors”. According to Article 96 of this law which stipulates: “All laws and regulations contrary to this law are repealed”, the criterion for study in this part will be the most important obstacles to laws on councils enacted in 1996 with subsequent amendments and extensions as well as all non-inconsistent laws with it.

1) First, it should be stated that council regulations by means of modelling on weak point of the Constitution in connection with this institution i.e. following the Principle 100 of the Constitution, do not consider the role of ‘administering local affairs’ for councils. This can be seen by studying councils’ regulations on duties and powers of councils at various levels.

Duties and powers¹⁷ such as investigation and identification of deficiencies, supervision of proper implementation of council’s resolutions, collaboration with executive officials in different fields etc. do not lead us toward ‘decentralization’ as a feature of local institutions.

2) Pursuant to Article 17 of the law on organization of Islamic Councils enacted in 1982, although councils have legal entities, this legal entity does not summarize solely in “the right to sue personalities and defend against their claims against council”- which is expressed in the last part of the so-called Article; but having legal entity also entails issues such as independency of councils, while in Iran, councils are financially dependent on municipalities or government¹⁸. Thus one cannot consider full legal entity for councils. Furthermore, the followings are illustrative of lack of independency of councils compared to government and lack of their appropriate status in the structure of the country, and consequently their lack of legal entity:

a) Pursuant to the Article 13 of the law on councils passed in 1996 and amended in 2013 and 2007: if councils invite central government officials such as prefect, legate, governor and other executive authorities, these official will participate in council meetings. In this regulation, the legislator has avoided the duty of central government officials to attend council meetings, however, pursuant to note 2 of the Article 14 of the same law, at the request of the minister, the Supreme Provincial Council is obliged to convene an extraordinary session. This reflects the lack of independency of councils compared to government as well as lack of appropriate status of them in the structure of the country.

b) Pursuant to Article 71 of law on amending the law on organization of Islamic Councils enacted in 1986: “Interior Ministry will provide a suitable area for Islamic Supreme Council of provinces.” According to this regulation, Supreme Council of provinces is, in terms of location, dependent on the government. This is nothing but the dependence of council on government.

c) Pursuant to Article 71 of the law on amending the law on organization of Islamic Councils enacted in 1986, “A membership card for members of Islamic Supreme Council of provinces will be issued on behalf of the Interior Minister and signature of the Speaker of the Parliament.” Officials at lower rank than of the Interior Minister and the Speaker of the Parliament will do the same for the members of Islamic Councils at other levels in this regard. By the way, issuance of cards in this manner indicates the lack of independency of councils in comparison to other institutions.

d) Paragraph “D” of the Article 68 of the law on councils enacted in 1995 specifies one of the duties and powers of Rural Councils as “explanation and justification of government policies.” This undermines the independency of councils over the government, also it makes the exploitation of councils possible.¹⁹

3) Article 80 of the law on councils enacted in 1995 amended in 2013 stipulates: “Decisions of all councils falling under this law are bind to enforcement if not meet any objection two weeks after the date of their notification; also, if the relevant authorities identify it contrary to principles of Islam or rules and regulations of the country or outside the scope of duties and power of the councils, they can make their objection to Islamic Council.”

In case of this legal Article, identification of their contrary to Islamic rules or regulations of the country is entrusted

¹⁶- The most important of these laws are: 1. the legal bill of local Councils enacted in 1979 by Islamic Council. 2. The law on formation of Islamic Councils of the country enacted in 1982 by Islamic Parliament. 3. Amendment law on the law on formation of Islamic Councils and election of these councils enacted in 1986 by Islamic Parliament.

¹⁷- Duties and powers of the councils are set in chapter three of the law on councils enacted in 1996.

¹⁸- the Article 22 of the law on formation of Islamic Councils enacted in 1982 is the supporter of this issue which states: Councils’ budget is supplied through Zakats and local revenues and, if necessary, through the tolls imposed in return for the provided services and its shortcomings will be compensated through state funds etc.

¹⁹- See: Mas’ood-nia, H., Civil Society and Non-governmental Institutions in Iran, Challenges and Guidelines, The Journal of Faculty of Administrative Sciences and Economy of University of Isfahan, 17th Year, No.2, summer 2005. P.131.

to the relevant officials, and in terms of note 1 of this Article, the relevant officials include prefect, legate, governor, the officials of the concerned executive agencies, Interior Minister and the highest official in the concerned organizations. Doing this undermines the status of councils. It is quite clear and obvious that identification of inconsistency of the decisions of councils or their inconsistency with rules and regulations should have been entrusted to authorities specialized in this regard, not officials and executive authorities who are not completely familiar with Islamic principles as well as rules and regulations of the country.

4) Note 3 of the Article 82 of the law on councils enacted in 1996 with extension in 2007 stipulates: "Person or people whose membership (in Islamic Council) are devested, can file a complaint to the Court of Administrative Justice." It can be said that regarding the concentration of branches of the Court of Administrative Justice in Tehran, it is not easy to file the complaint to the Supreme Court. Moreover, given the procedures of this Court, the trials will be done not in-person. Being not-in-person and inaccessibility of the Court of Administrative Justice is not compatible with individual rights. This problem becomes more pronounced with regard to the number of councils all over the country.

5) Although in the Principle 7²⁰ of the Constitution, council of the "region" is officially recognized and the law on country divisions announces "region" as the smallest urban unit, yet in the law on councils enacted in 1996, there is no regulation on the duties and powers of local councils and the way the elections should be held. Thus, this component is overlooked in country divisions.

3. Solutions

To meet the structural challenges and barriers faced by councils in the Constitution and ordinary law, the following guidelines are recommended:

3.1 On the Barriers Erected by the Constitution

As it has already been mentioned, the major structural barrier encountered by councils is the contradictions existing in the Principles of the Constitution on Islamic Councils. Thus, prior to presenting any suggestion and solution, the main solution for this problem should be sought in the Constitution itself. Principles 6 and 6 of the Constitution express the "decision-making and administrative" role of councils, which are aligned with general and determining Principles of the Constitution. The characteristic of the general Principles is that other Principles of the Constitution concerning the subject matter (including Principle 100) must be in line with the content of general and determining Principles.

According to above, it is recommended that a competent institution in charge of reviewing the Constitution, make the Principle 100 of the Constitution, which emphasizes the "monitoring of affairs" by councils, compatible and consistent with general and determining Principles 6 and 7.²¹ This becomes more evident when- as previously mentioned in barriers erected by the Constitution- in negotiations on the Principle 100 of the Constitution, the members of the Parliament of the final review of the Constitution mainly discussed "administration of affairs by councils and increase of powers of councils", but no conversation was made about "Supervision".

Apart from the revision of the Constitution in the current situation, the Guardian Council in the position of changing the Principles of the Constitution can put emphasis on the role of councils in making decisions and administrating country's affairs. Considering the current circumstances and situations of the Country (the extension of duties and power of the government, growth of the problems and struggles of the people, reduction in tension of the early period of the Revolution after two decades etc.) it is recommended that the Guardian Council, in order to reduce the size of responsibilities of the government and solve the problems of the people, with a new change, entrust the decision-making and administrating local affairs to Islamic Councils. Comparatively, in the developed countries with a long history, holding and administration of the so-called affairs are entrusted to local institutions. In these countries, the status of the local institutions is formed with regard to regulating and administrating local affairs.²²

With respect to the Principle 103 of the Constitution in case of the meaning of the term "Consideration", it seems

²⁰- the Principle 7 of the Constitution: "according to Qur'an, Councils, Islamic Parliament, Province, city, town, region, section, village Councils and so on are decision-making and administrative organs of the country."

²¹- contrary to some authors of the Constitutional law that in terms of the contradiction of the Principles of the Constitution, consider the subsequent Principles enforceable (Madani, J., Generalities of the Constitutional Law, p.41), it should be states that general Principle are accounted as the guide of subsequent Principles, therefore, the above idea is not applicable here.

²²- in developed countries and legal systems the model for the status of local councils in power structure is based on planning, monitoring and determining executive managements of the region (administration of local affairs). See: www.goodarzilawyer.ir, the paper on the status of councils in legal system of Iran.

that the members of the Parliament of final review of the Constitution, at the time of ratification of this Principle by opposing to add the term “enforcement” after the term “Consideration”, showed their disbelief in the authority of the councils and only accounted it as a factor of deliberation and consultation. If we concede this view, in fact, by moving away from Principles 6 and 7 of the Constitution, we have accepted the councils as an “artificial entity”. Thus, in line with the Guardian Court’s interpretation of the Principles related to the councils- alluded above- it seems that the Principle 103 of the Constitution regarding the meaning of the term “Consideration” becomes unambiguous. In a way that we accept the status of councils as a “decision-making” entity and consider state institutions as obliged to implement their decisions.

In addition, it is suggested that along with the amendment of the Principle 103 of the Constitution, the enforcement of non-implementation of Councils’ decisions become notified; since the dissolution of the councils according to the Constitution is predicted to be due to the deviation from legal obligations, it is convenient to notify the enforcement of non-implementation of Councils’ by government in the Constitution to elevate the status of councils in relation to government and state officials. For instance, we grant the right to propose the dismissal of state officials for Islamic Councils in this regard.²³

3.2 On Challenges Erected by Ordinary Laws

Given that the structural barriers and challenges facing Councils, from a legal perspective, stem from the Constitution, thus the ordinary legislator has failed to take stable and correct steps along with the provision of attributes and features of local institutions (administrative decentralization and having legal entity). Therefore, without adopting a different view on the Principles of the Constitution on Islamic Councils, one cannot be satisfied with various ordinary laws on Islamic Councils. Nevertheless, the following guidelines are recommended in connection with barriers erected by ordinary laws against councils:

- 1) The Islamic Parliament, regarding the interest of the country and taking into account the circumstances and situations- as already mentioned- has ratified a plan in line with strengthening the status of Islamic Councils based on increasing the scope of power of them in local matters (including decision-making and administering these affairs). If the Guardian Council does not approve it, by emphasizing the interest of the regime in this regard, it will benefit from the lever of The Expediency Discernment Council of the System for the final ratification of the plan.
- 2) By taking advantage of the current situation of the Constitution (Principle 100) and emphasizing the so-called “supervision” tool, Parliament can enact a law along with strengthening and highlighting the supervisory role of councils, or try to amend the current law on councils. Thus, it is recommended to enact the supervisory role of councils in the form of “Approval Supervision”, so that in this regard, state officials and organizations, in order to get matters done, acquire the endorsement of the Local Islamic Councils before taking any action. This, in addition to practical realization of the Principle of the Constitution (Principle 100) promotes the status of the councils in relation to state institutions. Besides, in order to make the supervisory role of the councils more effective, the ordinary legislator can consider enforcements for Islamic Councils such as abrogation of government measures in cases when the Local Islamic Council has not become persuaded.

As it can be seen, there is no barrier and impediment to Islamic Parliament to strengthen the supervisory status of councils. Here, the question that comes to mind is that in spite of lack of any legal prohibition against the activation of the supervisory role of councils, after three decades life of the Constitution, why the Parliament has not demonstrated the required determination to develop or modify the ordinary law in this regard.²⁴

- 3) It is recommended that the Court of Administrative Justice assume the responsibility for identifying the opposition of councils’ decision to Islamic rules as well as their inconsistency with laws and regulations. Just as the Court of Administrative Justice deals with those governmental decisions which are contrary to Islam and Law. Perhaps it is said that given the large amount of decisions made by councils, this is not possible for the Court of Administrative Justice. It should be acknowledged that first, the number of decisions which are contrary to Islamic rules usually are not to such extent that troubles the Court of Administrative Justice in this regard. Second, as the Court of Administrative Justice has established some offices throughout provinces to facilitate management of the affairs, it can also provide some branches of the Court over provinces and major cities. Furthermore, the control of councils’ decisions by state officials is against the Principle 4 of the Constitution²⁵ and its spirit; it should be

²³- see: The Detailed Proceedings of the parliament of Final Review of the Constitution, Vol.2, p.1004.

²⁴- Such lethargy in the work of legislature reflects the lack of belief in Islamic councils. In this regard, we have to admit that entities such as Islamic Parliament believe that the existence or non-existence of the Islamic councils practically do not interfere with running and administering of affairs of the country. On the basis of this, Islamic councils as a decoration, in fact, cannot play an effective role in the country.

²⁵- Principle 4 of the Constitution: all laws and regulations etc. must comply with Islamic rules. This is recognized by the Guardian Council jurists.

explained that the term “Regulations” is used in this Principle and the decisions of the Islamic Councils in terms of the hierarchy of laws and regulations are located in the fourth place²⁶; after the government’s resolutions. As the ordinary laws and government’s resolutions fall within the scope of monitoring of the Guardian Council jurists, similarly, the decisions of the councils should also be considered by these jurists.

Also, it might be stated that the assessment of the compliance of councils’ decisions with Law and Islamic rules after the initial diagnosis by state officials and superior councils (according to note 1 of the Article 80 of law on councils enacted in 1996) is undertaken by Committees of settlement of disputes and complaints (according to Article 79 of the law on councils enacted in 1996). There is a judicial official (the chairman or one of the deputies of the Court of Administrative Justice, Chief justice of the province, Chief justice of the city) in these Committees, however, it should be noted that although these officials are competent to control the decision of the councils in terms of laws and regulations, basically they are not qualified for controlling the decisions in terms of religion and Islamic rules.²⁷

4) In case of the complaint of the members of the councils about their deposed membership it is recommended that due to the problems in this regard- as mentioned in the section of obstacles- leave dealing with these grievances to the local judiciary. With regard to the easy access of individuals to the courts of justice and in-person proceedings, it is more equitable that courts of justice take the responsibility of such cases.

4. Conclusion

Despite having numeral regulations before and after the Islamic Revolution, Urban and Rural Islamic Councils have always suffered weaknesses and shortcomings. Although there have been so many non-legal obstacles in the way of success and triumph of these entities which have made its progress slower, what has been studied in this paper is related to the legal challenges and obstacles facing Islamic Councils. It seems that the most crucial issue that must be addressed now about the Islamic Councils is identification of challenges and employment of suitable guidelines to cope with them.

The most important structural legal barrier faced by councils is the method of understanding the Principles of the Constitution about them. Where with regard to opposing duties of “administration” and “supervision” the latter is being considered for the councils and the same interpretation of the Constitution has spread to ordinary laws on councils. This barrier alongside other obstacles have made the Islamic Councils not to meet the qualifications of local entities.

In order to overcome these challenges in the way of councils, one should start from the very beginning, which is the Constitution itself. Amendment of the Constitution or providing a different interpretation of the Principles of the councils in the Constitution by the Guardian Council can be the best solution for this problem. Then, the Islamic Parliament can directly or through The Expediency Discernment Council of the System pass the necessary reformed laws in line with granting full legal entity to the councils and increase their powers in line with local decentralization system. However, a change in the approach toward the Constitution and ordinary laws in this respect, in terms of the current situation of the country (high amount of state duties and increase in the problems of the people etc.) is compulsory, so that in line with it much of the problems become solved by the Islamic Councils.

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²⁶- The hierarchy of laws and regulations are: 1. The Constitution, 2. Ordinary Laws, 3. Governmental Decrees, 4. Decisions made by local institutions.

4- Unless the so-called officials are literally “Faqih”, which is, due to the current situation of the judicial system of the country, not certain.

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