



A COMPARATIVE STUDY OF THE SUPREME COURT OF IRAN AND THE UNITED STATES OF AMERICA

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Abstract

The Supreme Court, is the highest judicial authority in both legal systems, the Civil Law Group and the Common Law Group. In each legal system, the structure and functions of the court may vary according to the judicial system. The Supreme Court of the United States has ultimate appellate jurisdiction over all U.S. federal court cases, and over state court cases that involve a point of U.S. Constitutional or federal law. While in Iran, the Supreme Court is the highest juridical authority in Iran, established to supervise the correct implementation of laws by courts of justice and consists of the most prominent judges of the country. Understanding the structure and powers of the Supreme Court of any country will play an important role in understanding the legal system of that country. This article aimed to identify the structure, duties, and authority as well as the jurisdiction of the Supreme Court in Iran and the United States of America to conduct a comparative study of this supreme judicial authority in these two countries.

Keywords: Supreme Court, Jurisdiction, Judicial Authority, Constitution.

I. Introduction

In the past and before the modern justice system was established in Iran, disputes were not necessarily handled by government-appointed judges. Rather, the elders of each tribe and prestigious people often looked at disputes between people, even though they had no official authority from the government. Occasionally, government affiliates were appointed to handle disputes. However, in the capital of the state, the King could re-examine all the disputes, even though the verdict had already been issued. Whether by state judges or by prestigious individuals (Pasha Saleh, 2004: 12). As such, the King served as the Supreme Court. During the Achaemenid era,¹ a court consisting of seven judges was formed in the capital to re-examine the verdicts. During the Sassanid era,² Zoroastrian clergy could re-examine the verdicts (Ravandi, 2007: 4).

This trend continued after Islam. During the reign of the Abbasids,³ a court was formed in the capital known as the Divan-e Mazalem (grievances). At the head of the court was a person who was called a judge. He could review a ruling issued by any judge across the country. If he saw the vote in accordance with the religion, he would approve it, and if he saw it as against religion, he would revoke it. In that case, he would either judge the case by himself or pass it on to another (Saket, 2003: 45).

In the following periods, the Divan-e Mazalem continues to exist. In the Seljuk era,⁴ for example, there were two categories of courts: Sharia courts (Religious Courts) and state courts. Sharia courts handled people's private disputes (such as inheritance, marriage, etc.), but state courts handled people's crimes and their lawsuits against government agents. At the head of state courts, there was the Divan-e Mazalem eme Court. The tribunal could review the verdicts issued by the state courts (Yousefifar, 2016: 110).

Obviously, the dual system of courts could not have been desirable. It would undermine the authority of the government and make people wonder. Therefore, the need to change the approach was seriously felt.

This happened during the period of the Constitutional Revolution. The Persian Constitutional Revolution also known as the Constitutional Revolution of Iran, took place between 1905 and 1911. The revolution led to the establishment of a parliament in Persia during the Qajar dynasty. With the formation of parliament, the first constitution was written. The first constitution of Iran was signed by Mozaffar-e-Din Shah in 1905. Thus, the Iranian government, which had a monarchy-based nature, was transformed into a Constitutional monarchy. Due to political events, there was a hurry in writing the constitution, so it was incomplete. As a result, in 1906, the text was added as a supplement to the constitution (Ebrahimiyan, 1982: 76-77).

In the supplement to the constitution, a chapter was assigned to the courts. Under Article 71 of this code, state courts are the official authority for dealing with disputes. Mojtahedin (: A religious clergyman who, after years of studying in religious centers, deduces religious law)

¹ The Achaemenid Empire (559 BC–330 BC) was the first of the Persian Empires to rule over significant portions of Greater Iran. (Shapour Shahbazi and Daryaee (ed.), 2012:131)

² It ruled from 224 to 651 AD (Pourshariati, 2008: 4).

³ The Abbasid Caliphate was the third of the Islamic Caliphates to succeed the Islamic prophet, [Muhammad](#). It was founded by a dynasty descended from Muhammad's uncle, Abbas ibn Abdul-Muttalib (566–653 CE), from whom the dynasty takes its name. They ruled as caliphs for most of the caliphate from their capital in Baghdad in modern-day Iraq. it ruled from 1261–1517 AD (Bake, Mohammed, 1989: 45).

⁴ The Seljuk empire was founded in 1037. From their homelands near the [Aral Sea](#), the Seljuks advanced first into [Khorasan](#) and then into mainland [Persia](#), before eventually conquering eastern Anatolia. This dynasty was extinct in 1194 (Savory, R. M., ed, 1976: [82](#)).

can also judge only in religious matters. According to Article 73, the establishment of a court is possible only with the by law's permission, and no one can establish a court without the law's permission. In Article 74, this point was again emphasized. Therefore, not every clergyman can form a court and make a judgment.

According to Article 75 of the Constitution, a court was established in the capital called the Court of Distinction. The court was supposed to oversee the lower courts(Shams,2003:65). This principle has been translated from Article 147 of the Belgian Constitution. According to this principle: "There is a Supreme Court of Appeal for the whole of Belgium. This court lacks competency regarding matters of substance, save for the judgment of ministers and of members of Regional and Community Governments".⁵

In practice, however, the Court of Distinction was not established until the year 1911. This year, a code called the code of Principles of Structure of Justice was enacted. According to this code, there will be two categories of court: preliminary and appeal. Above these courts is the Court of Distinction. The court is divided into two branches: private and criminal law. Also, the members and the head of the Court of Distinction are appointed by the Minister of Justice with the King's approval. In 1938, at the suggestion of the Academy of Persian Language and Literature, the name of the Court of Distinction was changed to the Supreme Court.

With the outbreak of the revolution in the year 1979 and the fall of the monarchy, a new constitution was written. The Constitution of the Islamic Republic of Iran was adopted by referendum on 2 and 3 December 1979, and went into force replacing the Constitution of 1906. It was amended on 28 July 1989. The law officially and permanently ended the work of the religious courts. According to Principle 159, "The courts of justice are the official bodies to which all grievances and complaints are to be referred. The formation of courts and their jurisdiction is to be determined by law".

This code also assigned a principle to the Supreme Court. According to Article 161 of the Constitution, the Supreme Court is formed to oversee the proper implementation of the law in the courts and to resolve disputes between the courts.

II. THE POSITION OF THE SUPREME COURT IN THE STRUCTURE OF GOVERNMENT

In The Constitution of the Islamic Republic of Iran, the principle of separation of powers was recognized. According to Article 57, "The powers of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the absolute religious Leader... in accordance with the forthcoming articles of this Constitution. These powers are independent of each other".

Thus, the three branches of government, while being independent of each other, work under the supervision of the country's leader. The method of choosing a leader is described in principle 107. According to this principle, "... 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 religious men possessing the qualifications specified in Articles 5 and 109. In the event they find one of them better versed in Islamic regulations or in 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 a 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 religious leader and all the responsibilities arising therefrom".

⁵ http://www.servat.unibe.ch/icl/be00000_.html

The judiciary is one of the three branches of government. The tasks of this branch are in principle 156. In principle 156 as follows:

"The judiciary is an independent power, the protector of the rights of the individual and society, responsible for the implementation of justice, and entrusted with the following duties:

1. investigating and passing judgment on grievances, violations of rights, and complaints; the resolution of litigation; the settling of disputes; and the taking of all necessary decisions and measures in probate matters as the law may determine;

1. restoring public rights and promoting justice and legitimate freedoms;
2. supervising the proper enforcement of laws;
3. uncovering crimes; prosecuting, punishing, and chastising criminals; enacting the penalties and provisions of the Islamic penal code; and
4. taking suitable measures to prevent the occurrence of crime and to reform criminals".

The head of the judiciary is elected by the country's leader. In Article 157: "In order to fulfill the responsibilities of the judiciary power in all the matters concerning judiciary, administrative and executive areas, the Leader shall appoint a Religious cleric with the ability of ijthad and just, well versed in judiciary affairs and possessing prudence and administrative abilities as the head of the judiciary power for a period of five years who shall be the highest judicial authority". As such, the supreme authority of the judiciary is its head. He must have attained the ability of ijthad. Ijthad, that is, one's ability to deduce from Religious and Jurisprudential Rules after studying in religious schools. The Supreme Court of Iran is within the judiciary. According to Article 161, "The Supreme Court is to be formed to supervise the correct implementation of the laws by the courts, ensuring uniformity of judicial procedure, and fulfilling any other responsibilities assigned to it by law, based on regulations to be established by the head of the judicial branch". The head of the Supreme Court is also elected by the head of the judiciary. This will be discussed later.

The political system of the United States of America is the Federal Republic, and the system of separation of powers is clearly visible in this country (Tushnet, 1997: 47). The government of this country can be analyzed as follows:

There are two types of parliament in the United States: the US House of Representatives and the US Senate, which is fully responsible for legislating (Dotqueville, 1968: 110). In electing its representatives, there is no institution other than the direct vote of the people and cannot be dissolved. The president of the United States of America is also elected as the chief executive by direct vote of the people through the votes of the electoral assembly and has full authority over the election of ministers. In fact, the president does not need a vote of confidence from Congress, and Congress cannot mutually oust a cabinet or ministers by a vote of no confidence (Abul Fateh, 2002: 73).

At the top of the triangle of power in the United States is the judiciary or the Supreme Court of the United States of America, whose members are elected by the executive and legislative branches, and on the other hand, oversee the two branches. In other words, the judiciary, crystallized by the US Supreme Court, is fully independent and neither the executive nor the legislature can influence its decision-making process. In fact, the President or Congress cannot invalidate or refuse to enforce the decisions of the Federal Supreme Court (Webb, 2004: 112). Although members of the Supreme Court are nominated by the President with the approval of two-thirds of the Senators, they will be members of the Supreme Court as long as they are alive. As a result, they will enjoy independence because members of the Supreme Court will carry out their legal duties without fear of being ousted by the President or Congress. Under the constitution, members of the Federal Supreme Court are dismissed solely for their crimes (Johnson, 2001: 179).

The relationship between the Federal Supreme Court and the President is defined in that, on the one hand, the President nominates its members to Congress for approval, and on the other

hand, the Federal Supreme Court can declare a crime on the President's behalf. In such a case, the legal process of impeachment of the president in Congress would begin. The Federal Supreme Court and Congress also have reciprocal relations, in that Congress approves of individuals nominated by the president to become a member of the Federal Supreme Court and, in turn, can overrule congressional decisions. The Federal Supreme Court's vote to ensure proper implementation of the Constitution is binding on Congress and the President, and Congress cannot violate Supreme Court legal decisions.

Comparing these two legal systems, it can be said that in the United States, the two legislatures and the executive are effective in selecting Supreme Court members, while in Iran, neither the President nor the Majlis has a role in selecting Supreme Court members. Rather, it is the head of the judiciary who elects the president of the Supreme Court and other judges of the Supreme Court.

1. THE POSITION OF THE SUPREME COURT IN THE JUDICIAL SYSTEM

In American law, due to the federal and state government structures, there are practically two different judicial structures: one at the federal level and one at the state level. Obviously, the US Judiciary has federal courts on the one hand, and state courts on the other.

Pursuant to Article III of the US Constitution, the US judiciary is composed of the Supreme Court and the Courts that Congress may determine at any time. In line with the above principle, Congress passed the so-called Judiciary Act of 1789. Under the law, the US judicial system is a pyramid with the Supreme Court at the top of the pyramid, the appellate court is in the middle stage, and in the preliminary stage, the district court. The same pyramid pattern is found in each state (Hazard and Taruffo, 1993: 43).

Explain further that at the state level, each state has its own judicial organization and cannot be mapped to a single hierarchy. But there is typically a 3-degree hierarchy that includes the lower courts (district courts in the United States), courts of appeal in the United States, and a state Supreme Court. The appellate court has the power to hear appeals of the lower courts. In the event of a dispute between the lower courts and the Court of Appeal, the State Supreme Court shall rule. In some states, however, there is no appellate court, and appeals from the lower courts are referred directly to the state Supreme Court (hazard and Taruffo, 1993: 54). There are a wide variety of specialty courts in both civil and criminal matters, often differing from other states (Jolowicz, 2000: 301).

At the top of the federal courts is the Federal Supreme Court. The Courts of Appeal and then the District Courts are inferior to the Supreme Court. District courts actually play the role of lower courts. District court decisions are appealable to appellate courts, and In the event of a dispute between the two courts, the United States Supreme Court will decide (Tandy Lewis, 2007: 47).

In Iran, there is a central government and the provinces are not autonomous and in every respect, they are subordinate to the central government. Therefore, there is no government in the provinces. This also affects the judicial structure. In every city, there is a lower court and in every province, there is a court of appeal. At the head of these courts is the Supreme Court, which is based in the capital. Appeals against the lower court's decision will be heard in the appeals court. Appeals to the Court of Appeal are also under consideration by the Supreme Court. Thus, in Iran, unlike the US, there is only one Supreme Court, and each province has no Supreme Court.

1. SUPREME COURT ORGANIZATION

The Supreme Court is composed of two sections: branches and the General Assembly. At the same time, the head of the Supreme Court should also be mentioned.

Branches

In Iran, The Supreme Court currently has forty branches. The branches of the Supreme Court are formed only in the capital (Tehran), but if the head of the judiciary considers it necessary, he can form a branch of the Supreme Court in other cities as well.

There are two judges in each branch. One is the head of the branch and the other is his adviser. Each case is studied and decided by both judges. If they disagree, a third judge will be added. This judge is considered a member of the branch only for this case. In that case, the majority will decide. The third judge is elected by the President of the Supreme Court.

To be appointed as a branch judge, one must meet the following requirements: Has reached the level of *ijtihad* or Has studied Islamic law for ten years in religious schools, or Have ten years of legal practice (as a lawyer or judge). The Head of the Judiciary appoints the person who is eligible to serve as the Supreme Court judge.

The Divisions of Court are divided into two categories: private and criminal law. Judges fall into either of the two based on experience and knowledge. The cases are referred to the Branches by the Chief Justice, which means the Chief Justice decides which case to study by which judge.

In the legal system of the United States of America, In the US Supreme Court, there is no branch, but the Supreme Court as a whole has nine members that handle cases (Patrick, 2001: 28). The members of the Supreme Court examine the cases together unless one of the judges is absent due to illness or any other specific reason. The decisions of the Supreme Court shall be taken by a majority of the members present (Hall, 2004: 364).

there are no specific requirements as to the general or specific requirements of Supreme Court justices; Therefore, the President has full authority in selecting the judges of this authority and can elect any person who wishes to do so (Patrick, 2001: 28). Presidents usually elect people who are politically similar to him and often belong to the party to which the president belongs. It is very unlikely that people who have not read the law will be appointed; in practice, they will be appointed to have experience and expertise in legal matters. Members of the Supreme Court are elected by the President of the United States with the recommendation and consent of the Senate; That is, persons are nominated by the president to the Senate. Senate members can also refuse to accept nominees for any reason (Hazard and Taruffo, 1993: 64).

Apart from the appointment process, consideration is also given to how membership ends; Explaining that Supreme Court justices are elected for their lifetime, provided they are well-behaved (Leuchtenburg, 1995: 85). As such, the termination of the membership of the Supreme Court may be accomplished by the resignation of the members themselves, their deaths, or the declaration of guilt by the House of Representatives and the trial by the Senate (Patrick, 2001: 28). But these cases have rarely happened so that only one judge has been convicted of a crime, trial, and expulsion in history (Leuchtenburg, 1995: 148).

1. *Chief of the Supreme Court*

The head of the Supreme Court must have two characteristics: First, it must have reached the level of *ijtihad*. Second, it must be aware of judicial issues. According to Article 162 of the Constitution, the head of the judiciary must consult with the judges of the Supreme Court to elect the President of the Supreme Court, but the mechanism for this consultation has never been established. In practice, the head of the judiciary appoints the head of the Supreme Court

after a hearing with the judges of the court and hearing their views. According to Article 162, The Chief of the Supreme Court is nominated by the head of the judiciary branch for a period of five years. The head of the Supreme Court is not just an official, he is also the head of one of the branches.

The President of the Supreme Court has only been mentioned in Article 6, Section 3, of the Constitution only once (Patrick, 2001: 69). The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside.

As previously stated, the United States Supreme Court is composed of nine members The President of the Supreme Court is one of nine members of the Court appointed by the President in consultation with the Senate. However, the presidency of the Supreme Court is important in that the person holding the post is recognized as a judge, administrator, and symbol of national justice and is responsible for overseeing the federal court system (Hazard and Taruffo, 1993: 46).

However, other members of the Supreme Court are assistants

(Associates), but they have the same right as the Chief Justice: In other words, there is no difference between the head of the Supreme Court and the other members of the Supreme Court in terms of the number of votes (Patrick, 2001: 28). In fact, the head of the Supreme Court has no extra advantage over other judges. The workflow can well illustrate this equality: cases in the Supreme Court are attended by nine members, and at least five votes are required to approve or reject the Court's decisions (Patrick, 2001: 28).

Therefore, it can be seen that there is no distinction between the members and the President of the Court. However, it is important to note that the head of the Supreme Court is different from other members in writing the vote, after voting, if the chairman is in the majority, he has the power to write the vote himself (Patrick, 2001: 69).

Or delegate it to another and thus influence the writing of the vote, but if it is in the minority, the author of the vote is determined by the majority. The Supreme Court has had 16 presidents since 1789, the longest presidency, lasting 34 years (Hall, 2004: 641).

1. *The General Assembly*

In the Iranian legal system, judges are independent judges, meaning no other official can impose his or her opinion on the judge. The judge has to make a decision based on His own understanding of Laws, regulations, and legal principles.

This method, though, has some advantages. But this causes disagreement among the judges. This causes disagreement among judges, meaning that judges make different Duties and Powers of the Supreme Court decisions in similar cases. This undermines the credibility of the judiciary. In addition, it makes people in trouble. So the legislator has considered a solution. Accordingly, the Supreme Court has a duty to resolve disputes.

To this end, Supreme Court justices gather in one session to look into the dispute. This meeting is called the General Assembly. A public hearing is held at the request of the President of the Supreme Court. Whenever the President of the Court is informed that there is a disagreement between the Courts on a single issue, he shall request a hearing. Any judge across the country can tell the Supreme Court that there is a disagreement between judges.

The General Assembly shall be composed of three-quarters of the Judges of the Court (including Presidents and Advisers). The Chairman of the General Assembly is the President of the Supreme Court. The judges at the hearing examined the matter and Then they vote. The opinion of the majority of judges will be valid. this opinion will be binding on all judges. In fact, the vote of the board is like the rule of law. The Supreme Court's vote because it eliminates the dispute is called the Unification Judgment of the Supreme Court. In American law, although

there is no specific legal provision regarding the Unification Judgment, courts are always required to follow the decisions of the Supreme Court (Lane, 2008: 5).

1. DUTIES AND POWERS OF THE SUPREME COURT

1. In Iran, there are two stages to the court process: preliminary and appeal. Accordingly, it is the principle that the verdicts of the Court of Appeal cannot be re-examined by the supreme court except in exceptional cases. According to Article 367 of the Code of Civil Procedure, the decisions of the preliminary court cannot be appealed by the supreme court unless they are worth more than 20 million Rials or are related to The validity of the marriage and termination of it, divorce, waqf. Also, the appellate court's judgments cannot be appealed by the supreme court unless they are related to The validity of the marriage and termination of it, divorce, or waqf. After the appeal, the petition is referred to one of the branches. Branch judges review and decide the case. If the verdict is in accordance with the law, it will be approved and if it is against the law, it will be returned to the court that issued the vote. The court is required to review the case again. The Supreme Court in Iran does not examine the case substantially, but rather examines the case formally. The Court seeks to determine whether the laws of the country have been followed in the case.

The US Supreme Court is, in principle, an appeal body. Therefore, it is not competent to deal with the case at the preliminary stage, except in specific cases. The second part of Article III of the US Constitution states: "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations, as the Congress shall make". Also, in cases where states are suing each other, the Supreme Court is the authority to hear complaints. Other than that, in principle, the Supreme Court is a judicial authority for appeals. Under the United States Constitution, the Supreme Court will consider appealing the decisions of state and federal courts.

Its decisions are binding. It is, in fact, the final phase of the legal proceedings and the joint chapter of the two-state and federal judicial agencies. For this reason, its rulings are of particular importance and create unity in the judicial process. This unity reduces disagreement between states' legal systems and creates a kind of internal unity within the US legal system.

As stated above, there are two main differences between the Supreme Court of Iran and the United States: First, the Supreme Court in Iran is always an appellate authority, while the Supreme Court in the United States is sometimes considered a primitive authority. Second, the Supreme Court in the United States shall have appellate Jurisdiction, both as Law and Fact deal with issues of jurisdiction, while in Iran, the Supreme Court only deals with the law.

1. in Iran, The president of Iran can be dismissed in two ways: First, if parliament votes that the president is incompetent. Second, where the Supreme Court decides that the President has violated his duties. In either of these two assumptions, the matter is referred to the leader. He can oust the president. According to Article 110, "The duties and responsibilities of the leader are as follows: ... 10. Dismissal of the President of the Republic, with due regard for the interests of the country, after the Supreme Court holds him guilty of the violation of his constitutional duties, or after a vote of the Islamic Consultative Assembly testifying to his incompetence on the basis of Article". The details and how the Supreme Court will deal with it are unclear. Are all Judges of the Court going to investigate the President's violation? Of course, this is not possible. It seems that the head of the Supreme Court should refer the case to one of the branches.

In that case, that branch also has to make a decision. In practice, the president has never been removed by the Supreme Court.

In American law, pursuant to paragraph 6 of section III of Article I of the Constitution, "The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present". Also, pursuant to paragraph 2 of Section 2 of Article 2, "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction"(Leuchtenburg, 1995: 221).

The comparison suggests that in Iran, the Supreme Court, alone, can deal with a president's violation. Given the judicial nature of the Supreme Court, the Court should focus only on legal matters, not on political issues. The comparison suggests that in Iran, the Supreme Court, alone, can deal with a president's violation. Given the judicial nature of the Supreme Court, the Court should focus only on legal matters, not on political issues. But in America, the Supreme Court alone does not have such jurisdiction: the primary jurisdiction is with the Senate and The President of the Court (and not all of its members) will chair the meeting. So, depending on the characteristics of the Senate, investigating the president's infringement becomes a political aspect.

1. One of the tasks of the Supreme Court is to oversee the law passed by the US Congress and state legislatures. If the laws are contrary to the principles of the Constitution, they are void by the Supreme Court. In other words, the Court has the role of the Constitutional Court is to prevent federal or state authorities from violating the Constitution. This duty is, more than any other duty of the Court, political and has a significant impact on the political and social developments of the United States. The Court's decisions in this regard are definitive and unchangeable (Leuchtenburg, 1995: 230).

In Iran, the Supreme Court has no such authority. In fact, after a law is passed by parliament, the law is sent to an institution called the Guardian Council. based on Article 91, "To safeguard the Islamic ordinances and the Constitution, to examine the compatibility of the legislation passed by the Islamic Consultative Assembly with Islam, a council to be known as the Guardian Council is to be constituted with the following composition:

1. six religious men, conscious of the present needs and the issues of the day, are to be selected by the Leader, and

six jurists, specializing in different areas of law, to be elected by the Islamic Consultative Assembly from among the Muslim jurists nominated by the Head of the judicial power"(Article 94).

1. All legislation passed by the Islamic Consultative Assembly must be sent to the Guardian Council. The Guardian Council must review it within a maximum of ten days from its receipt to ensure its compatibility with the criteria of Islam and the Constitution. If it finds the legislation incompatible, it will return it to the Assembly for review. Otherwise, the legislation will be deemed enforceable.

VI. THE JURISDICTION OF THE HIGHEST JUDICIAL AUTHORITY IN RELATION TO THE INTERPRETATION AND SUPERVISION OF THE IMPLEMENTATION OF THE CONSTITUTION

A. The Competencies of the Highest Judicial Authority in Relation to The Interpretation of the Constitution

Although there is no text on the authority to interpret the constitution in the laws of this country, but this practice is common in the law of this country that the courts have the right to interpret the laws as judges. Now, if the constitution is discussed according to the issue, they also have the authority to interpret this law. Thus, all US courts have the power to interpret the Constitution, but the ultimate responsibility for denotation of right from wrong and interpretation lies with the Court.

In the interpretation of the constitution, it is important to note that "the constitution is not like other laws that could be re-explained, so it must be interpreted in a way that covers various aspects of human life." For this reason and so is that, despite the inexpedience of the authority of congress to approve and establish the bank, the Court accepted the possibility and permission of Congress to create the bank by not considering the limitation of the powers of Congress. But sometimes this sensible practice is far removed from the view of the Supreme Court, as for the answer to this question "Is it inspection of the car by the police with regard to Amendment 4 prohibited or not?" because at the time of enactment of this amendment there were no cars, the above principle cannot be invoked⁴

B. Jurisdiction of The Highest Judicial Authority in Relation to Supervision

The Court oversees the implementation of the Constitution in relation to both powers.

1. The Executive Branch

The most important authority and jurisdiction of the Supreme Court are in the "judicial review authority" of this branch: an authority that regulates the balance between the powers and the relationship between the powers and the people and increases the power of the Court in the field of legislation as a parliament⁶ and due to that distinguishes the court of good and bad deeds of the national government and provincial from the constitution. This competence can be specially developed to the extent that it can overturn government decisions. Among these controversial decisions is the Court's decision in *Roe v. Wade* (1973) case, in which the Court recognizes and upholds the right of women to abortion as an example of the right to privacy, and considered criminal law prohibiting the above act against the constitution. and also among other important decisions, we should mention the decision of *Brown v. The Board of Education* (1954) noted that racial segregation was banned in schools.

The most important criticism of the Court's authority can be summed up in two points: first, that the Court should not be able to question democratically elected government actions, and second, that it runs counter to the principle of separation of powers.

Although these two critiques are consistent with the traditional view of the principle of separation of powers, the truth is that the three forces should not be seen as distant islands: in the new interpretations of the principle, the connection between forces is seen and one of The characteristics of each power is to prevent that power from exceeding the powers of other powers. We, therefore, believe that the power of judicial review causes the Court to prevent

the executive from exceeding the limits of its jurisdiction: an authority which, if exercised properly, can be used to ratify and strengthen it rather than as undemocratic.

2. The Judiciary

One of the functions of the Court is to oversee the decisions of the United States Congress and state legislatures. If these resolutions are found to be contrary to the principles of the Constitution, they will be invalidated by the Supreme Court. In other words, the court acts as a constitutional court to prevent violations of the constitution by federal or state officials. According to some authors, this task is considered more political than other tasks of the Court and has a significant impact on the political and social developments in the United States.

This is especially important because the United States Constitution begins with a description of the functioning and power of the legislature, and therefore its importance and role among the formulators of the US Constitution. Between 1790 to 1990, 132 laws passed by the United States Congress and 1,127 laws passed by state legislatures were declared unconstitutional by the Federal Supreme Court. The fewest cases of rejection by the Federal Supreme Court date back to the 1790s and 99s, when no law was deemed unconstitutional, but in the 1970s to the 79s, the American people faced the highest level of opposition from the Supreme Court to congressional and state legislatures. During this decade, 20 US congressional resolutions and 181 state legislatures were declared unconstitutional. These decisions of the Court regarding the violation of the Constitution are final and unchangeable.

C. Elections

In 2000, George W. Bush of the republican and Al Gore of the Democratic Party ran for the presidential election in America. Following the vote count, the Supreme Court exercised its jurisdiction over the dispute and on November 7, 2000, declared George W. Bush the winner of the US presidential election. Interestingly, seven of the nine judges on the court were republican, and more interestingly, George W. Bush won the election in the crucial state of Florida, which will determine the next president, by a margin of 537 votes. The request for a recount was rejected by the US Supreme Court despite the permission of the Florida State Supreme Court.

VII. STUDY OF THE LEGISLATIVE POWERS OF THE SUPREME COURT IN THE AMERICAN JUDICIAL SYSTEM

A. Legislative Competence of The Highest Judicial Authority in Preparing Bills

The truth is that the Supreme Court of this country does not have a permanent and prescribed jurisdiction to legislate, and this jurisdiction cannot be called as a special function of this court, but in practice and to use the scientific and experimental abilities of experts working in this court, sometimes The case and temporary authority is also assigned to the legislature. In American law, for example, differences in the procedures of federal state courts led to the passage of the 1934 Act, which left the development of a single system of jurisdiction to the Supreme Court, provided that the text of the Court was finally approved by Congress. A task force in the court was tasked with carrying out this task, which eventually passed the 1938 Act.

B. Legislative Competence of The Highest Judicial Authority in Exceptional Legislation in Judicial Affairs

Although there is no specific legal provision regarding the ruling on the unity of procedure, subsequent courts always find themselves obliged to follow the decisions of the Court. This is particularly important because the Court does not see any doubt as to its jurisdiction to hear and challenge dissenting opinions.

VIII. JURISDICTION OF THE SUPREME COURT

The main jurisdiction of the Court should be considered in the appellate hearing; However, Article 3 of the Constitution and other laws passed by Congress have given the Court Primary Instance jurisdiction along with appellate jurisdiction. Of course, there are rare cases of exercising this authority. Explain that in very limited cases, a lawsuit may be brought directly before the Supreme Court. The initiation of a court hearing on such cases under the jurisdiction of the original jurisdiction is justified. It is noteworthy that there is no legal text passed by Congress in this regard: this point extends the hand of the Supreme Court tremendously. These cases usually deal with disputes between states and mainly border disputes. In practice, the court in such cases appoints a special forensic expert to review the evidence of the parties and submit it to the court along with its legal analysis. Usually, one or two such cases are submitted to the Court each year.

The Supreme Court also has the authority to hear states' complaints against each other. The founders of the United States created this institution to resolve disputes among members of the federation. In these cases, too, the Court has jurisdiction over the merits. Under the United States Constitution, in the United States legal system, appeals from both state and federal courts are heard in the Supreme Court, and the rulings are final and binding. This court is in fact the final stage of legal proceedings and the joint chapter of the state and federal judiciary. For this reason, its rulings are of special importance and create a unity of procedure in the procedure. This unity of procedure reduces differences between state legal systems and creates a kind of internal unity within the US legal system.

In the United States legal system, litigation can be divided into two distinct stages: In the first stage, the parties can present their testimony and evidence in court, but for the person who loses in this stage, there is still a chance for a retrial.

Regarding this stage and the role of the court, the following points can be mentioned:

First, With the passage of the Judiciary Act in 1789, an attempt was made to formulate a single law as a federal law. According to the Code of Judicial Procedure, judges must rely on federal law only when it exists, otherwise federal law will not apply. Despite this effort, state law still takes precedence over federal law, and legal pluralism in the United States has not disappeared. Currently, there are differences between states in the implementation of many civil and criminal laws. In one state the death penalty may be legal, and in another, it is prohibited, or even driving, marriage, inheritance, and tax laws differ. These differences in civil rights between states are more pronounced; Because federal law is more general, public law and due process and penalties vary from state to state, depending on the cultural conditions and historical roots of those states.

Second, regarding the diversity of laws and regulations in the United States, the existence of a United States Supreme Court has become necessary for legal coordination. In addition to

issuing final judgments issued by appellate courts, it has a duty to establish consensus in the federal legal system and to hear complaints brought under the laws of different states.

Third, there are two purposes in the appellate court: to ensure the correctness of the proceedings in the subsequent courts and to harmonize the legal system.²⁰ In this way, the effect of the final hearing and the votes issued will go beyond its parties and will affect other persons as well. In any case, the Court's view and practice have shifted from mere correction of errors to harmonization of the legal system.²¹

Fourth, a simple definition of the Court's review authority states: "The authority conferred on the Supreme Court by the Constitution to review and review the final decisions of each of the state's highest courts and to review cases from the United States Court of Appeals itself"; Thus, not only are the courts of each state subject to the jurisdiction of the Court, but the courts of the country are also subject to the jurisdiction of the Court.

Fifth, A person who appeals against the decision of the obverse Court shall submit a petition²³ to the Court for consideration. This petition is prepared mainly by lawyers and usually briefly and according to customary procedure in a maximum of 30 pages and includes some important issues of the case including the case and the verdict, the course of the case, and finally the legal importance of the case. The other party also has the right to draw up a bill ²⁴ that falsely discloses the information contained in the appeal or the legality of the case. Although the Court may request other information and documents, the decision of this authority to accept or reject the case for reconsideration is usually based on the above documents.

Sixth, Accepting or rejecting the review of the case in the court in question and then voting; This decision can be made with 4 positive votes of the members of the court. This is known as rule four.²⁷ The above decision is known as a Writ of certiorari. The definition of a legal entity states: "It is a written order issued by the Supreme Court and exercises the discretion of the Court to instruct the State Supreme Court or the Federal Court of Appeals to submit the records of a case for inspection." The source of authority for issuing the above order is the constitution of this country and the law approved by Congress. Article 3 of the Constitution and other laws passed by Congress give the Court two powers: primary jurisdiction and appeal. Law 1891 empowered the Court to review the final decisions of subsequent courts in certain cases by issuing the above order. The issuance of the above order or its non-issuance is entirely at the discretion of the Court and the Court does not need to justify or explain its decision.

Seventh, the above decision will be issued when there are important and special reasons for the court to hear, such as the existence of conflicting decisions of the courts or when the court has significantly and significantly deviated from the usual procedure, as well as when the court in particular, it decides on a matter in which the Supreme Court has not yet ruled, or if the court's decision conflicts with previous decisions of the Court. Also, if due process is not followed or the vote violates the fundamental rights of individuals, the court will not doubt its jurisdiction.

Eighth, after accepting the court can give each party the opportunity to attend and provide information orally. This is usually 30 minutes and has little to do with the court's final decision. However, in some cases, such as *Brown v. Board of Education* the Court adjourned the hearing for information due to the importance of oral information. Another point to note is that the appeal stage is not such that the case flies entirely to a higher court in such a way that the Supreme Court wants to hear the witnesses or examine the new evidence, but rather the limited court review of the case; It is not a matter of subject matter. Therefore, to violate the verdict, one should try to prove the erroneous verdict of the obverse court to the court and not merely prove that the obverse Tribunal made a mistake in the substantive matters.

Ninth, The Supreme Court, like other competent authorities, shall hear matters in the presence of more than one person; More precisely, the nine members of the Supreme Court review the decisions of the subsequent courts together. A few days after the hearing, a meeting is convened in the presence of the judges, and after secret negotiations, the decision is taken unanimously

and signed by the President of the Court, unless the President of the Court disagrees with the decision of the majority, in which case the vote by The Chief Justice signs after him.

A. The Jurisdiction of the Highest Judicial Authority Regarding the Interpretation of the Constitution

In Iran, according to Article 98 of the Constitution; The interpretation of that law falls within the exclusive competence of the Guardian Council, which will be approved by three-fourths of its members. Therefore, the interpretation of the constitution is left to an authority beyond the three powers, and the Iranian legal system in this regard is dependent on the principle of separation of powers. Such an interpretation has a value equal to the constitution itself (Madani, 1983) and is like the principle of law for all respected and binding officials (Katouzian, 2004: 130).

B. The Competencies of the Highest Judicial Authority in Relation to Supervision

Because in the Iranian legislative system, the implementation of the constitution is monitored in the legislative process, the basic premise is that all laws are in accordance with the constitution. Therefore, the Supreme Court has no jurisdiction over the legislature, but on the contrary, the courts and the Supreme Court of Iran are obliged to follow the laws authorized by the parliament. Supervision of the implementation of the Constitution in connection with the approval of the law in the Islamic Consultative Assembly has been a priori, which is done by the Guardian Council of the Constitution. Accordingly, before the resolutions of the Islamic Consultative Assembly become binding law, they must be approved by the Guardian Council in terms of compliance or non-compliance with the constitution. After the approval of the law and its approval by the Guardian Council, no authority has the right to abrogate or waiver it, and only the Islamic Consultative Assembly can abrogate the old law with the approval of the new law (Katouzian, 2004: 169).

In Iran, the Supreme Court has no jurisdiction to review decisions and regulations made by the executive branch. Although Article 170 of the Constitution obliges judges to refrain from enforcing government decrees and regulations that are contrary to Islamic laws and regulations or outside the powers of the executive branch, in accordance with Article 173, to deal with the complaints, violations, and protests of the people against government officials or units or regulations and the realization of their rights, a court called the "Court of Administrative Justice" is established under the jurisdiction of the judiciary. Article 170 of the Constitution, on the one hand, warns the courts of Iran against the implementation of decrees and regulations that are contrary to Islamic laws and regulations, and on the other hand, makes the annulment of these regulations within the jurisdiction of the Court of Administrative Justice. Accordingly, the courts of Iran, as well as the Supreme Court, cannot implement the ratification or regulations approved by the executive branch if the ruling on their annulment has been issued by the Court of Administrative Justice (Shams, Volume II Advanced, p. 410). The Court of Justice has a separate structure and organization from the Supreme Court, and although it is part of the judiciary, it is independent of the Supreme Court. Therefore, the Supreme Court has no jurisdiction to review or monitor the opinions and decisions of the executive branch, and this is the responsibility of the Court of Administrative Justice.

IX. STUDY OF THE LEGISLATIVE POWERS OF THE SUPREME COURT IN THE IRANIAN JUDICIAL SYSTEM

The Supreme Court of Iran has no jurisdiction to legislate. The law is the exclusive competence of the Islamic Consultative Assembly. However, the Supreme Court, in overseeing the rulings of the subsequent courts and in uniting judicial procedure, makes decisions that are in accordance with the law. According to Article 471: "Whenever different branches of the Supreme Court or the courts issue different opinions on similar cases, including legal, criminal and judicial matters, with different inferences from the laws, the President of the Supreme Court "The chief justice or the Attorney General, in any way they become aware, are obliged to seek the opinion of the General Assembly of the Supreme Court to create a unified procedure ...". The rulings issued by the Supreme Court as a unit of judicial procedure are equal to the law and the Iranian courts are obliged to comply with them. Article 473 of the law of Criminal Procedure stipulates in this regard: « The rulings on the unity of procedure of the General Assembly of the Supreme Court can be changed only in accordance with the law or the ruling on the unity of later procedure issued in accordance with Article 471 of this law. » Therefore, unlike the US legal system, in which there is no legal article regarding the unity of judicial procedure, in Iran, the law of this country allows the General Assembly of the Supreme Court to issue a decision on the unity of procedure, the validity of which must be considered by law.

A. Judicial Jurisdiction of the Supreme Court

Article 161 of the Constitution states that the purpose of establishing the Supreme Court is to supervise the proper implementation of laws in the courts and to establish the unity of judicial procedure and the performance of the responsibilities assigned to it by law. Therefore, regardless of the task of creating a unified judicial procedure, which has been described, the jurisdiction of the Court can be summarized in two cases:

1. Supervising the correct implementation of laws: The most important role of the Supreme Court in the Iranian judicial system is to monitor the correct implementation of laws in the courts. This oversight is exercised through the handling of appeals against court rulings. In fact, if the Supreme Court does not find the inference of the issuing courts of the laws and regulations in the case correct, or if it finds that the effective rules of the trial in the general sense have not been observed, it will violate the appealed verdict and often infer the same verdict, Proclaims the correct manner and manner of proper implementation of the rules of procedure (Shams, 2008: 105). It is noteworthy that the ruling of the Supreme Court in this regard is not binding on the subsequent courts, but in violation of the ruling of the Supreme Court has practically exercised its oversight. However, the courts can issue an assertive verdict, and finally, with the formation of the General Assembly of the Legal or Criminal Branches, the verdict may be overturned and the case may be referred to the same court for an appropriate verdict (Shams, 2008: 105). A noteworthy point in this regard is that according to Article 366, "Cassation is the determination of the conformity or non-conformity of the requested appeal with the religious norms and legal regulations." Therefore, the Supreme Court, in its position of supervising the proper implementation of laws in the courts, has neither the dignity nor the authority to review the substantive verdict and only examines its form in terms of compliance or non-compliance with religious and legal regulations. For this purpose, the branches of the Supreme Court consist of a chairman and two advisers is formed, whose meetings are formalized in the presence of two people.

2. Performing the responsibilities assigned to the Supreme Court according to the law: In addition to the duty of supervising the proper implementation of laws in the courts of the

Supreme Court, in some cases, according to the law, it has the primary authority to deal with certain issues. These include:

1. *Investigating the President's Violation*

According to Article 110, Paragraph 10 of the Constitution, the removal of the President is one of the duties and powers of the leadership. However, the removal of the President by the Supreme Leader is possible only when the Supreme Court has sentenced him to violate his legal duties. Therefore, the President's violation of the Supreme Court is the prelude to his removal from the presidency.

2. *Permission to retrial in relation to criminal sentences*

According to Article 473 of the law of Criminal Procedure, it is possible to request a retrial in the seven cases authorized in the said article in relation to the final verdicts. Such a request shall be submitted to the Supreme Court in accordance with Article 476 of the same law. If the authority deems the request to be in accordance with one of the seven cases mentioned above, it shall refer the case to the court of the issuing court with a retrial order.

X. CONCLUSION

The United States Supreme Court plays an important role in governing the judiciary through the interpretation of the Constitution and through the power of judicial review, especially since, in addition to the above two powers, the Court also has appellate jurisdiction: the power by which the Court can exercise Strictly monitor the duties of judges and violate their wrong decisions. Therefore, if we consider the pillar of the highest judicial authority of any country in the judicial oversight of that authority over the courts, without a doubt, the United States Supreme Court will be the supreme judicial authority of this country.

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