

The Kurdish Concerns over Constitutional Amendments

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In the beginning of protests most of the demands of protesters were more related to economic issues, fighting administrative and financial corruption, suddenly the issue of constitutional amendment added to the protesters demands. Now constitutional amendment has become a serious issue and there are practical steps as Iraqi parliament formed a committee to review constitution in four months. Certainly constitutions are subject to change, but at this stage constitution is not a source of the Iraqi political and economic crises.

The concern related to the willing of some of the political parties which under pretext to meet demands of protesters, want to use constitution to weaken federalism and democracy in the political system of Iraq.

How much amendment of constitution is practical? What are the risks on federalism and democracy in Iraq in general and constitutional rights of the Kurds and other minorities in particular? More importantly, what Kurdistan region should do about constitutional amendments?

Amendment of constitution

For the first time it was Sunnis demand to make amendments in constitution but finally that have changed and become part of some of the Shia political parties' demand and it's been for a while that have been asking for. In 2009 there was an attempt to amend constitution. In that proposal asked to amend 102 articles out of 144 articles in Iraqi constitution. In fact this was more like asking for new constitution rather amending the existing constitution. Some of the Shia parties are serious in their perspective that parliamentarian system won't make strong state therefore are asking to change the system to the presidential one and amend constitution.

" According to article 126, The President of the Republic and the Council of the Ministers collectively, or one-fifth of the Council of Representatives members, may propose to amend the Constitution." But eventually amending constitution is related to the approval of the majority of its citizens in a general referendum."

Although in provisions second^[1] and fourth^[2] of the article 126 and fourth^[3] provision of article 142 there is strong mechanism to protect Kurds, Sunnis and Regions right especially Kurdistan region in any likely amendment of constitution in the interest of majority, but in a place like in the Middle East and Iraq easily can violate such constitutional provisions that people voted for."

And some of the Shias are planning to submit a lawsuit against article 142 which this article seen as Kurdish-Sunni veto power. Through this attempt are trying to make the Kurds lose their veto powers via three governorates on constitutional amendments. And this is under pretext that ratified constitution was only 129 articles and later added other articles. But this is not a legal excuse because constitution is 144 articles which has approved during public referendum in 2005.

There are two constitutional articles related to amendment of constitution which they are articles 126 and 142. In constitution amendment the priority is to use article 142 even the parliament committee for constitution amendment was

formed according to this article.

The positive part of this article is giving veto power and other part need to be concern about because according to this article all constitution will be revised and during amendment all articles will be voted on collectively.

Constitutional amendment risks for the Kurds

For the Kurds federalism is main achievement in the current Iraqi constitution, therefore we should not let others amend the articles related to federalism in constitution. Even we should encourage Sunnis in demanding for federalism. And there are some other articles in constitution which they are in the interest of Kurds if they amend them will be bad for Kurds such articles (121,112,115, 114,106,117,140,126).

Another issue if the Iraqi political system changes to presidential system this would affect the balance between different components participation in Iraqi political authority.

The protests created an opportunity for the Shias to be in the favor of central power. And that's why are insists on constitutional amendments. But the problem is that members of the parliamentary committee for constitutional amendments are members of the ruling political parties that protesters have taken to the street against them.

There are 18 members of constitution amendment committee which there is no agreement between them that on what mechanism and how to make decision regarding to the laws to be amended. Also four months is not enough to review constitution and this cannot be done professionally in such short period. Therefore this need more time to solve main issues of constitution. For example there are 50 articles that have not been implemented and need to be organized by law; because of this instead to look basic law is more like parliamentarian law which to change and amend is easier.

As protests are still continue some of the Iraqi MPs and politicians in order to stay in power accept any demands. The risk is that if they agree to change some of the main principals of constitution.

Conclusion

The only guarantee for the Kurds is veto powers through three KRI governorates but this also can make political problem for Kurdistan region because as now amend constitution has become part of protesters demands then in this case they will take stance against Kurdistan region. Also this might lead to international pressure on the Kurds to accept some of the constitutional changes. In 2005 when constitution was drafted, Kurds were in different condition and powerful in many levels. But now the condition has changed and is not like that for the Kurds anymore.

The federal court is decisive institution between regions and to protect components rights within federal system but the problem is that the court was not established according to constitution but it was established by a decree from PM.

Efforts to amend constitution are serious and Kurds instead of defensive and conservative policy should try to propose its demands on constitution. And during amending articles should work to protect what have achieved in 2005 and try to gain what's not achieved yet, therefore should:

1-Create a national professional committee to support Kurdish representatives in the Iraqi parliamentary committee to amend the constitution.

2-Work to add another article in constitution to ban amends those articles related to the nature of state federalism.

3-Propose designate members of the federal court in constitution, not as what's now proposed to be organized by a law. And should explain the role of religious figures that should not have legal role, because federal court's laws are not

powerful as constitutional articles.

4-Propose the federal council in constitution, which should include representatives of KRG and provinces. There should be clear whether its members elected based on number of population or equally among governorates. And should not include religious men as Shias ask for. In addition presidency of the council should be periodical between components.

5-Kurds should try to extend the deadline (of parliament committee to amend constitution) for more than four months.

6-Should hold different professional meetings on constitutional amendments and inform public about the risks.

[1] The fundamental principles mentioned in Section One and the rights and liberties mentioned in Section Two of the Constitution may not be amended except after two successive electoral terms, with the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a general referendum, and the ratification by the President of the Republic within seven days.

[2] Articles of the Constitution may not be amended if such amendment takes away from the powers of the regions that are not within the exclusive powers of the federal authorities, except by the approval of the legislative authority of the concerned region and the approval of the majority of its citizens in a general referendum.

[3] The referendum on the amended Articles shall be successful if approved by the majority of the voters, and if not rejected by two-thirds of the voters in three or more governorates.