

**CRITICAL ANALYSIS OF GOVERNANCE UNDER THE 2004 CONSTITUTION OF
AFGHANISTAN**

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Abstract

The first republic in Afghanistan was established by Sardar Mohammad Daoud Khan in 1973 and the second was established after 2001 under the Bonn Agreement. According to the Agreement the first will establish an interim government and after it a transitional government. Transitional administration had the task of drafting a constitution and to facilitate presidential elections. The republic until 2021, ruled by two presidents, Hamid Karzai and Mohammad Ashraf Ghani, and collapsed with the re-establishment of the Islamic Emirate. This study discusses the nature of the form of government in accordance with the constitution and what problems it had.

The significance of this study lies in the fact that the government in light of the "Constitution" in Afghanistan has identified shortcomings that have made governance controversial. Identifying these shortcomings can help create a system in the future that is capable of doing good governance.

Secondary sources have been used in the process, which is qualitative in nature. Books, laws, magazines, journals, newspapers, and other materials are examples of secondary sources.

Finally achieved that the government in Afghanistan through 2004 constitution was centralized in which local government had the role of implementer of plans which would be created by the central administrations. The separation of powers and balance was overshadowed by a powerful executive branch. Relatively weak parliament and increased control of the executive branch on judiciary were some of the issues that plagued governance and caused constant controversy between the government and parliament.

Key words: Constitutionality, Separation of Power, Interpretation of laws, Presidential System, Vote of No-confidence.

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1. Introduction

On December 1st, 2001, after 9 days of meetings and discussions the participants in the Bonn Conference in Germany signed a two-stage agreement that laid groundwork for a new system. According to the agreement, a six-month interim government was agreed upon by groups and figures involved in Afghanistan, ranging from the Northern United fronts to pro-Mohammad Zahir Shah factions (Anwari, 2011).

According to the agreement, the creation of a transitional government after a six-month interim government and the convening of a Loya Jirga to elect its chairman was the main task of the interim government, which should not be after June 2002. The transitional administration will run for two years (until June 2004) and will be tasked with drafting a new constitution and holding democratic elections in accordance with the constitution (Bonn Agreement, 2001).

The constitution established a unitary (non-federal) state governed by a system of government similar to presidential system in which the executive branch was given more powers than judiciary and legislature.

The constitution created a governmental structure that focused on ethnic composition, with its advantages as well as its difficulties.

According to the constitution, the powers were divided in such a way that up to the collapse of the republic, especially between the executive and the legislature.

The study provides a critical look at governance in Afghanistan in accordance with the constitution, which discusses the structure of government and the distribution of power and actions among the powers. It should be noted that in this study, the word constitution, which is used everywhere, refers to the 2004 constitution, and the word government refers to the executive branch.

2. An overview of constitution (2004)

In Afghanistan ten constitutions have been drafted so far, the first one has been established during the government of Shah Amanullah Khan in 1922 and the last one is the term of Hamid Karzai in 2004.

The tenth one was approved by the Loya Jirga in the tent of the Loya Jirga (Bonn Agreement, 2001). The nine-member commission for the drafting of this law was formed by the decree of the head of the transitional government of Afghanistan on 2003. The commission completed its work up to the end of the year.

Following the completion of the work of the Commission for the Drafting of the Constitution, by the decree of the Head of State, a Commission of Inquiry was formed in 2004 with 5 members. After their overviewing, the Constitution was debated and approved in the Loya Jirga from 7th of Qaws to 7th of Jeddey and signed by the President of the Transitional Government Hamid Karzai And was deemed enforced.

3. Governance in Afghanistan

governance is generally understood as “the various institutionalized modes of social coordination to produce and implement collectively binding rules, or to provide collective good, Thus, governance consists of both structure and process. Governance as structure relates to institutions and actor constellations (Börzel et al., 2010).

According to the Constitution of Afghanistan, the government in Afghanistan is governed by a Similar to presidential

System of government, which will be formed by the votes of publics, In the presence of a stronger executive than any other power.

The executive branch is such powerful that it could legislate too, president has the right to appoint one-third members of mishrano jirga. The president also has the power to veto legislation passed by parliament. (Grote, 2004)

It also played a role in the selection of judges at all levels, which in turn overshadowed both the separation and balance of power. Thus Afghanistan has a weak legislation and judiciary against strong executive power. (Jayakody, 2015)

a unified state, centralism, Islamic republic, rule of law and democracy are the five basic principles of the constitution. Thus according to article 137, maintaining the principle of centralization Government gives some of the necessary powers to local authorities; to accelerate economic, social and cultural growth.

It seems that some principles of decentralization has been adopted in Afghanistan as well. Accordingly, a number of scholars are of the opinion that according to the constitution, Afghanistan has a deconcentrate centralization, because according to the constitution, there should be elected provincial and district councils in the provinces, which is a feature of the decentralized system (Ayobi et al., 2018).

But in my opinion, in practice, it is clear that there is a strong centralism in Afghanistan according to the law, because the provincial councils, although they exist, do not have specific powers, and there is even a debate about who these councils belong to. As well as the district councils were not formed until the fall of the republic.

In order to take a critical look at the governance of Afghanistan in accordance with the said constitution, it is necessary to discuss each and every force and how they work.

3. 1 Executive power

The executive branch is a strongest brace of afghan government which defines as the heading of government in constitution.

Article 71 says that the government is made up of ministers who work under the presidency of president.

In this definition, government is used in a narrow sense, because government is defined in terms of executive power.

Also, the definition for government is very limited to only the president and ministers. Accordingly, the definition is flawed because the government is in practice a combination of the president, the council of ministers, ministries, independent commissions, independent agencies and local bodies (provinces and districts).

3. 1.1 Duties of the Executive power

According to Article 75, the government (executive branch) has the following functions (Constitution of Islamic republic of Afghanistan, 2004):

1. Implement the provisions of this constitution and other laws and final decisions of the courts.
2. Maintaining independence, defending territorial integrity and maintaining Afghanistan's status and interests in the international community.
3. To maintain public order and security and eliminate all forms of corruption.
4. Budget preparation, regulation of state finances and protection of public property.
5. Design and implementation of social, cultural, economic, and technological development programs.
6. To report to the National Assembly about performed affairs at the end of the year and on important programs for new financial years.
7. To perform such other duties as may be prescribed by the Constitution and other laws.

3. 1. 2 The power of the executive branch in legislation:

According to article 76, the government enacts and adopts regulations to implement the basic lines of the country's politics and to regulate its functions. These regulations should not contradict the text or spirit of any law (Constitution of Islamic republic of Afghanistan, 2004):.

In light of article 79 The government can also issue legislative decrees on an urgent need, without budget and finances, in the event of a Wolessy Jirga (House of Representatives) recess. A legislative decree becomes law after signing by the President. It must be submitted to the National Assembly for approval within thirty days, after the first sitting of the National Assembly. If haven't approved, loses its credibility.

3. 1. 3 President

According to article 60 of the constitution In Afghanistan, president is the head of state throughout the country, exercising his powers in the executive, legislative, and judicial spheres, and therefore at the head of the government (executive branch)(article 71 of constitution). Article 60 of the constitution says that, president has two first and second vice presidents, In addition to nominating himself, he also announces the names of his deputies to the nation, In the event of the President's absence, resignation or death, the First Vice President and the Second Vice President in the absence of the First Vice President shall govern the affairs of the country, in accordance with the provisions of the Constitution until another President is appointed(Constitution of Islamic republic of Afghanistan, 2004).

The president elects for a five-year term by free, general, secret and direct voting. If no candidate receives more than 50 percent of the vote in the first round, the election will be held for second time within two weeks after the announcement of the results. Two Participants, who received the most votes in the first round can take part. In the second round of elections, the person who gets the majority of votes is considered the President.

If a presidential candidate dies during the first or second round or after the election, before the election results are announced, a new election is held in accordance with the law (article 61 of constitution)

The whole country is a constituency for the presidency. (Electoral law, 2016).

During or after the election, before the announcement of the results, after the death of a candidate in the first and second rounds, the issue of new elections is debatable, whether during the first or second rounds. Candidate dies, that's right, and if the winning candidate dies before the election is announced, then it is appropriate for re-election. Why the criticism is that if after the election and before the announcement of the results a candidate dies who got very few votes or did not get the winning vote and another candidate who got the winning vote is alive if so, for what reason should re-election be held? There were several disadvantages to this, first: the nation's wealth was being wasted on re-election. The second is that government affairs are hampered and delayed.

And third that is unjust to the winning candidate.

3.1. 3. 1 qualifications for Presidential Candidacy:

According to Article 62, a person nominates for the presidency in Afghanistan must meet the following qualifications (Constitution of Islamic republic of Afghanistan, 2004):

1. Be citizen of Afghanistan, Muslim, born from Afghan parents and have no citizenship of another country.
2. Not less than forty years of age on the day of nomination.
3. Not have been convicted by a court for crimes against humanity and felony or deprivation of civil rights.
4. He will not serve two terms as President of the country. (No one can be elected President for more than two terms)

The qualification for presidential candidacy is in view of situation in Afghanistan at all. For instance the nationality of Afghanistan and born from Afghan parents is an important qualification for presidential candidacy, thus the United States and its allies were in control of Afghanistan at that time, and many such people came to Afghanistan in their presence / Was brought dual nationals, and it is difficult to trust the commitment of a dual nationals to the country, which during the last 20 years of the republic in Afghanistan and after its collapse it was proved that dual national government officials was not more committed to the country than pure Afghans, but was always accused of taking away national wealth.

Two more qualifications should have been added to the situation of the President in view of the situation in Afghanistan, one is that the level of literacy is very low here, the political parties were not able to govern and gain the trust of the people. Therefore a political party could nominate a qualified and educated person but couldn't win the election, the qualification of education should have been added for the president.

Secondly the most of politicians in Afghanistan are accused of some form of crimes. And for years, no stable system has been in place to prosecute these defendants in absentia or physical to convict them. With the benefits of third qualification, every accused person can freely nominate himself. The man accused of the crime must also prohibit from nomination for presidency.

3. 1. 3. 2 Powers of the President:

According to Article 64, the President of Afghanistan has the following powers (Constitution of Islamic republic of Afghanistan, 2004):

1. Supervise the implementation of the Constitution.
2. Determining the basic lines of the country's politics with the approval of the National Assembly.
3. Great leadership of the Afghan Armed Forces.
4. Declaration of war and discontinuation of war with the approval of the National Assembly.
5. To make necessary decisions in case of defense of territorial integrity and protection of independence.
6. Sending armed forces out of Afghanistan with the approval of the National Assembly.
7. Convene a Loya Jirga without the qualifications mentioned in Article (69) of this Constitution.
8. Declaring a state of emergency with the approval of the National Assembly and ending it.
9. Opening of National Assembly and Loya Jirga sessions.
10. Accepting the resignation of the Vice Presidents.
11. Appointment and removal of Ministers, Attorney General, Central Bank, National Security and Red Crescent Directors with the approval of the Wolesi Jirga.
12. Appointment of the Chairman and members of the Supreme Court with the approval of the Wolesi Jirga.
13. Appointing, retiring, accepting and dismissing judges, armed forces, police, national security officials and other high-ranking officials in accordance with the provisions of law.
14. Appointment of Heads of Afghanistan's Political Representations in Foreign Countries and International Organizations.
15. Accepting credentials of foreign political representatives in Afghanistan.
16. Signing laws and legislative decrees.
17. Issuance of credentials for the signing of treaties between states in accordance with the provisions of law.
18. Reduction and remission of punishments in accordance with the provisions of law.
19. Awarding medals, badges and honorary titles in accordance with the provisions of law.
20. Establishment of commissions, in accordance with the law, to reform the administration of the country.
21. Other powers and duties enshrined in this Constitution

Article 143 reads that, president may also declare a state of emergency in all or some parts of the country, with the approval of the National Assembly, if the danger of war, severe disturbances and natural disasters or similar qualifications make it impossible to preserve independence and national life. If the state of emergency lasts for more than two months, the

conformity of the National Assembly is required to extend it (Constitution of Islamic republic of Afghanistan, 2004).

In light of article 144, In the event of emergency, the president may transfer some powers from National Assembly to the government, in consultation with the chairmen of the National Assembly and the Supreme Court (Constitution of Islamic republic of Afghanistan, 2004).

According to Article 145, in case of emergency, the President may suspend or impose restrictions on the some provisions of the Constitution after the approval of the Chairmen of the National Assembly and the Supreme Court.

Article 147 says that, If the presidential term or the legislative term of the National Assembly ends in a state of emergency, the holding of new elections will be delayed and the term of office of the President and members of the National Assembly will be extended for four months. If the state of emergency lasts more than four months, the Loya Jirga will be convened by the President. Elections will be held within two months after the end of emergency (Constitution of Islamic republic of Afghanistan, 2004).

In 13 number, president has the power to appoint and dismiss judges. This means the control of government on judiciary power, therefor courts can't trail government authority independently, and may perform their jobs in accordance with government will.

3. 1. 3. 3 Factors for realizing presidential sponsorship:

According to Article 67 of the Constitution, in the event of the resignation, removal, death or incurable illness of the President, which prevents him from performing his duties, the First Vice-President assumes the powers and duties of the President.

There are cases where the First Vice President should take charge of the affairs of the country. This article does not cover all the factors of sponsorship realizing, if the President is captured by the enemy or runs away from the country. What will happen next? It should have been mentioned here that and in case the President could not continue the presidency ... then to some extent this problem would have been solved.

Afghans faced such problem after the collapse of last republic, when Former president Ashraf Ghani go out from the country, and didn't say anything about his presidency, the first vice president Amrullah Salih announced himself as a acting president of Afghanistan and argued on article 67 of constitution.

3. 1. 4 Council of Ministers:

The Council of Ministers is made up of ministers. Each minister is accountable to the president and Wolesy Jirga (House of Representatives) for their assigned duties.

The constitutional position of the Government in the new Constitution is weak. The Constitution of 2004 does not allow for the independent political role of the Government, which is caught in the crossfire between the President and Parliament. The Ministers are not only appointed by the President, they are also responsible to him (Constitution of Islamic republic of Afghanistan, 2004), which practically means that they can be sacked by unilateral Presidential decision. (Hamidi, 2015)

The question is that, what are the qualifications for being ministers in Afghanistan? To the answer of this question we shall elaborate the qualification below:

3. 1. 4. 1 Qualifications for appointment of a Minister:

According to Article 72, a person appointed as a Minister must have the following qualifications (Constitution of Islamic republic of Afghanistan, 2004):

1. Have Afghan citizenship only. If a candidate for a ministry has the citizenship of another country, the Wolesy Jirga (House of Representatives) has the power to approve or reject him.
2. Higher education, work experience and good reputation.
3. Not less than 35 years of age.
4. Not have been convicted by a court for crimes against humanity and felony or deprivation of civil rights.

Anyone who meets the above criteria, whether he is an ordinary person or a member of the National Assembly can be appointed as a Minister, the member of the National Assembly will lose his membership in the National Assembly if he becomes Minister.

The first qualification for a minister in Afghanistan was a controversial issue in the republic, which often led to disputes between the government and the Wolesi Jirga, and because of this, the president was unable to complete his cabinet. Therefore the ministries administered unconstitutionally by acting ministers.

The constitution leaves a door open for dual nationals on the grounds that there are not enough professional and educated people in the country to run the ministry, who are mostly out of the country. They needed to acquire the citizenship of other countries (Abdullah, 2019)

The above view is unacceptable for two reasons, the first being that the qualification should be that, that a person appointed as a minister in Afghanistan, if he has second citizenship, should relinquish it, but if needed to let dual citizens to be minister, it should have been

limited for the time being, and since then no dual citizen should have been nominated as a minister.

Although the Wolesy Jirga (House of Representatives) passed a bill in the 1393» by a majority of votes that no more dual nationals could be part of the cabinet and asked the government not to nominate dual nationals as ministers, albite, after the Members of the Wolesy Jirga (House of Representatives) were divided on the issue, with about 126members calling for the bill to be reviewed (“120 Parliament member”, 2015)

On the last qualification, the same criticism is raised as in the part of President's discussed.

3. 2 Legislature:

In Afghanistan, the National Assembly acts as the legislature. The National Assembly is made up of two chambers, the Wolesy Jirga (House of Representatives) and the Mashrano Jirga (Senate), each of which has its own members.

None of the National Assembly’s members shall be prosecuted for his/her opinions, expressed during the executing of his/her duties.

3. 2. 1 Qualifications for membership of the National Assembly:

Those who are elected to the National Assembly, must, in addition to the qualifications of the electorate, have the following attributes:

1. Be a citizen of Afghanistan, or have had Afghan citizenship for at least 10 years prior to the date of your nomination or appointment.
2. Not have been found guilty of crimes against humanity and felony or denial of civil rights by a court.
3. Members of the Wolesy Jirga (House of Representatives)have completed 25 years of age on the day of nomination and members of the Mashrano Jirga (Senate) have completed 35 years of age on the day of nomination or election(Constitution of Islamic republic of Afghanistan, 2004).

As we elaborated above that National Assembly has two houses, Wolesy Jirga (House of Representatives) and Mashrano Jirga (Senate), for more information we will discuss each chamber as bellow:

3. 2. 2 Wolesy Jirga (House of Representatives)

The Wolesy Jirga (House of Representatives)is made up of representatives of the people and is chosen by the public directly. Members of the Wolesy Jirga (House of Representatives)are

elected through free, general, secret and direct elections (Constitution of Islamic republic of Afghanistan, 2004).

The term of their works is five years, with the maximum number of members being fixed in proportion to the population of each constituency up to (250). Women MPs with the minimum number of members being fixed in proportion to the population of each constituency up to two seats in Wolesy Jirga (House of Representatives) from every province. According to article 50, Seats in each constituency are awarded to the candidates who receive the most legal votes. In the case of a tie for the final seat between the two candidates, the winner will be determined by the highest standards. The highest standards are: (Electoral law, 2016).

1. Degree of education.
2. Work experience in government or non-government organizations.

Here, if one person has a high degree of education and the other person has sufficient work experience in government or non-government organizations, it is not clear who will be considered successful.

One of the issues that needed to be addressed in the Wolesy Jirga (House of Representatives) election was that, each province makes one constituency and candidates would compete throughout the province. In my opinion, there were several problems with this system. One was that a candidate would belong to one district and in other districts of the province, people would not know much about his personality and background. In terms of number of districts, most districts would not have any representation at all, not even neighboring districts.

Third, if the province had been divided into constituencies based on the number of MPs, it would have been easier for candidates to campaign. Every committed, literate and well reputed person could nominate himself, as well as two or three neighboring districts would have one representative in Wolesy Jirga (House of Representatives) and the people would have a better choice.

On The second qualification of nomination for the National Assembly is the same criticism that has been discussed at the chapter of President above, this problem is more at the level of ministers and presidential candidates, moreover. some members of the National Assembly would also have benefited from this qualification

Who were accused of various crimes, for example local commanders often found their way to the National Assembly to be accused of various crimes. (Ibrahimi, 2019)

3. 2. 2. 1 Special Powers of Wolesi Jirga:

According to Article 91, the Wolesy Jirga (House of Representatives) has the special powers as bellow (Constitution of Islamic republic of Afghanistan, 2004):

1. To make a decision regarding the impeachment of any Minister in accordance with this Constitution's requirements found in Article (92).
2. Decide on development programs and government budget.
3. Approval or rejection of appointments, accordance to the orders of this Constitution.

3. 2. 2.2 impeachment of Ministers by Wolesi Jirga:

According to article 92, Wolesy Jirga (House of Representatives) can impeach any Minister, on the recommendation (29%) of all members, if the explanation provided is not satisfactory, the Wolesy Jirga (House of Representatives) is examining the issue of no-confidence vote. Which is issued by a majority vote of all members of the Wolesi Jirga (Constitution of Islamic republic of Afghanistan, 2004).

3. 2. 2. 3 Interrogation of Ministers by Wolesi Jirga:

Wolesy Jirga (House of Representatives) can interrogate each minister for their works.

According to article 93, each of the commissions of both chambers of the National Assembly can ask questions to each of the ministers on specific issues. They can answer orally or in writing form.

3. 2. 3 Senate:

According to Article 84, the members of the Mashrano Jirga (Senate) are elected as follows (Constitution of Islamic republic of Afghanistan, 2004):

1. One of the members of each Provincial Jirga elected by the relevant Jirga for a term of four years.
2. One of the members of the District Jirgas of each province, elected by the respective Jirgas for a term of three years.
3. The remaining one-third of the members, including two representatives of Disabled and Defectives and two representatives of the nomads, are appointed by the President for a term of five years from among the knowledgeable and experienced persons of the country. (president appoints 50% women of these one-third members).

3. 2. 4 Administrative Board of the National Assembly:

According to Article 87, At the commencement of the work of both Houses of the National Assembly, one of its members shall serve as the Speaker for one legislative term, two as First Deputy and Second Deputy and two as Secretary and Deputy Secretary for one year (Constitution of Islamic republic of Afghanistan, 2004).

3. 2. 5 Powers of the National Assembly:

According to Article 90 of the Constitution, the National Assembly has the following powers:

1. " Approval, amendment or repeal of laws and legislative decrees "
2. " Approval of social, cultural, economic and technological development programs "
3. " Approval of the state budget and permission to borrow or lend "
4. " Create, adjust or abolish administrative units "
5. " Ratification of treaties and international covenant between the states or secession of Afghanistan from them "
6. " Other powers enshrined in the Constitution "

3. 2. 6 Legislation in Afghanistan:

The law has defined as following in article 94:

"A law is a bill that has been approved by both chambers of the National Assembly and signed by the President, unless otherwise stated in the constitution" (Constitution of Islamic republic of Afghanistan, 2004):.

Article 95 says, "if there is a need for legislation in any area, the draft law can be proposed by the government or by the members of the council. And in about judicial affairs the Supreme Court proposed it. Only budget and finance legislation is proposed by the government" (Constitution of Islamic republic of Afghanistan, 2004).

Wolesy Jirga (House of Representatives) submits draft law to Mashrano Jirga (Senate), within 15 days the Mashrano Jirga (Senate) will take action on it. The National Assembly will prioritize to decide on the laws, treaties and development programs of the government which necessitate immediate carefulness based on the proposal of the government.

Article 97 says, "If the proposal for drafting a law is made by ten members of either of the two houses, it shall be, after approval of one fifth of the House where it was initiated, included in the work agenda of that House" (Constitution of Islamic republic of Afghanistan, 2004).

If the resolution of one jirga is rejected by the other jirga, an equal number of joint jury are appointed by the members of both jirgas to resolve the dispute. The decision of joint jury has the ability to enforce after president sign. If they fail to resolve disagreements, the ratification considers rejected. Article 100 says, In this event, the Wolesy Jirga (House of Representatives) can approve it, at its next session by a two-thirds majority of all its members. This ratification, without being submitted to the Mashrano Jirga (Senate), becomes effective subsequent the President signs it (Constitution of Islamic republic of Afghanistan, 2004).

3. 2. 7 An Overview of the Budgeting Process:

Article 98 of the constitution states that, the state budget is made up of the Ministry of Finance, which submits it to the National Assembly after approval by the Cabinet. The first it presents to Mashrano Jirga (Senate) in the National Assembly. The power of the Mashrano Jirga (Senate) is limited to consultation only. They submit it to the Wolesy Jirga (House of Representatives) along with their advice, which the Wolesy Jirga (House of Representatives) rejects or approves. Effectives after the signature of the President. Before the start of the fiscal year, If the budget is not approved for some reason, until the confirmation of new budget, the last year's budget is applicable. The Wolesy Jirga (House of Representatives) should not postpone the approval of the budget about more than one month and not more than 15 days to allow the borrowing and repaying of loans which are not included in the budget. If Wolesy Jirga (House of Representatives) couldn't decide on the proposal, the proposal is considered approved.

There is an observation that the power to approve and repay a loan has been given to the Wolesi Jirga, but the time limit has been fixed. This would limit the power of the Wolesi Jirga, and the government could take advantage of this restriction and borrow without the confirmation of the Wolesi Jirga, which could be a heavy burden on the people and ultimately create a gap between the government and the people.

3. 3 Judiciary:

According to 116 article, the judiciary is considered an autonomous organ of the Islamic Republic of Afghanistan, consisting of a Supreme Court, the Court of Appeal, and the Primary Courts, whose structures and powers are govern by law. The Supreme Court, as the supreme judicial body, is at the head of the judiciary of the Islamic Republic of Afghanistan (Constitution of Islamic republic of Afghanistan, 2004).

The Supreme Court consists of nine members who are appointed by the President with the approval of the Wolesy Jirga (House of Representatives) and accordingly to the last paragraph of Article (50) and (118) of the Constitution:

Three members of the Supreme Court are appointed for four years, other three for seven years and the remaining three for ten years. The last election is for ten years. Re-election of members is not permitted. According to article 117 the President appoints a member of the Supreme Court as the Chief Justice. until the end of their term of office the Members of Supreme Court shall not be discharged, except as provided in Article (121) of this Constitution (Constitution of Islamic republic of Afghanistan, 2004).

The appointment of members and the head of the Supreme Court by the President reflects the government's widespread interference in the judiciary, which the autonomous of the judiciary calls into question.

The president also has power of appointing and discharging the judges in the lower courts, it do not require the approval of Parliament.

As well as in interpretation of constitution, the government is trying to use its role in interpreting the laws by the Supreme Court in its favor, as exemplified above.

3. 3. 1 Qualifications of Supreme Court Members:

According to Article 118 of the Constitution, the members of the Supreme Court must meet the following qualifications:

1. The age of the Chief justice and members at the time of appointment shall not be less than forty years.
2. Have the citizenship of Afghanistan.
3. Have higher education in legal or jurisprudential sciences and specialization and sufficient experience in the Afghanistan judicial system.
4. Have well character and good reputation.
5. Not have been convicted by a court for crimes against humanity and felony or deprivation of civil rights.
6. Shall not be member of any political party at the time of appointment.

3. 3. 2 Appointment of Judges for Courts:

According to Article 132, "judges are appointed at the proposal of the Supreme Court and approval of the President". The appointment, transfer, promotion, impeachment and

retirement of judges are the prerogative of the Supreme Court (Constitution of Islamic republic of Afghanistan, 2004).

3. 3. 3 Jurisdiction of the Judiciary:

According to 120 article of constitution, the judiciary has jurisdiction to consider all lawsuits filed by individual and legal persons against the courts.

Article 121 Of constitution said that, "at the request of the Government, or courts, the Supreme Court shall review the laws, legislative decrees, international treaties as well as international covenants for their compliance with the Constitution and their interpretation in accordance with the law". The judiciary draws up its own budget, which is drawn up by the Supreme Court and presented as part of the state budget by the government to the National Assembly.

Article 121 of the constitution is too short and indefinite

Anyway, despite being brief, Article 121 segregated the subject of judicial review from the subject of interpretation. In the Constitutional Loya Jirga few changes made to this Article, with the objective to keep the Article precise, proved to be a trigger for the controversy between the three branches of the state in the upcoming years (Timory, 2019).

The ambiguity is in examining the compatibility of laws, legislative decrees, international treaties and international conventions with the constitution is the power of the Supreme Court. The legislative power argues that the power to interpret the constitution is not vested to the Supreme Court, only the power to interpret ordinary laws is vested to them, but the judiciary considers it within its jurisdiction, which caused the conflict between the government and the legislature for many times.

In 1398 when When problems arose in 2014 presidential election and because of that postponed the election about 4 months. Therefor the issue arose that, the president should remain in power after the deadline. Or not? This was also ambiguity that an interim government should be formed or any other else? While previous President Ghani and the National Unity Government interested to stay in power until the election, other presidential candidates insisted that the National Unity Government should step down after the deadline. In order to resolve the issue in accordance with the constitution, the National Unity Government sent a letter to the Supreme Court of the Presidential Palace's Policy, Oversight, and Legal Department (letter no. 529, dated 28/1/1398). In the letter told the court that the commission had postponed the election until 6th meezan, leaving a gap of four months

between the end of the presidential term and the new election, which could be extended, especially went to the second round. Therefore, according to 61 Article of the Constitution, you have to present your legal views on the end of the term of the President and the postponement of the elections. The High Council of the Supreme Court, in its (100-31/1/1398) decision, interpreted the law such that would allow the President and his deputies to remain in power until the election of new president, the same scenario was repeated during the presidency of previous President Karzai in 1398/2006(Adili,2019).

Members of the legislature, for a number of reasons, do not consider the Supreme Court's jurisdiction to be justified. Second, since the members of the Supreme Court are appointed by the President, the government can interpret the law to its advantage through the communication and pressure and proceed accordingly (huseni, 2020).

As well as, in 2007 the Wolesy Jirga (House of Representatives) had impeached the Foreign Minister Rangin Dad Far Spanta and another Minister, Akbar Akbar, for their role in the deportation of Afghan refugees from Iran. Finally the Wolesy Jirga (House of Representatives) gave them no-confidence vote.

President Hamid Karzai accepted the no-confidence vote against Akbar Akbar but sought to determine the legality or illegality of the Wolesi Jirga's decision according to Spanta. On the grounds that the constitution was ambiguous about no-confidence vote. Asked the Supreme Court to interpret the constitution. The Supreme Court eventually ruled that the no-confidence motion against Spanta was unconstitutional, and that Spanta remained in place.

As well as, in 2010 when a dispute accrued over the result of parliamentary election, Karzai established a special election court to investigate election's complaints. The constitution and electoral law don't provide for the establishment of a special courts for elections; this power is relegated in the Independent electoral commission (IEC). As a result the question of constitutionality has raised about mentioning court. Karzai asked the Supreme Court to issue a decision on the constitutionality of special election court. The Supreme Court issued a statement in favor of the president and in which they consider the court constitutionally (Pasarlay, 2016).

While this issue has clarified in the Law on Powers and Structure of Courts (1392). This law considered the interpretation of all laws and legislative decrees as the power of the Supreme Court.

3. 4 Local Government:

The structure of local government in Afghanistan is significant, the local governments tasked with playing the role of a provider of public service delivery, while key decisions are made by the central government. The relationship between central and local authorities is essentially vertical.

The local government system is made up of four bodies, namely, provincial and district level department of ministries, municipalities, provinces and districts, and provincial and district councils (Nijat, 2016).

According to the constitution, the governing body is divided into central and local government bodies. The number of provinces and related institutions, territories and structures are regulated by law on the basis of population, social and economic status and geographical location.

A provincial jirga is formed in each province. The members of the provincial jirga are elected by the people of the province for four years in proportion to the population, through free, general, secret and direct elections.

Jirgas has also made in districts and villages level to streamline local government affairs and ensure the active participation of the people in them. The members of such jiragas Appoints for three years. But has not yet elected.

Centralism, Old-style bureaucracy and nepotism was the main point which caused the local government weak.(Nemat et al., 2016)

Governors have a coordinating role in local government, he operate through a network of informal actors that are often just as signifcant as formal office-holders. District governors have a similar coordinating role, but have seen their formal powers reduced. In recent years, especially in the feld of justice delivery. Development planning and budgeting at the provincial level is dysfunctional largely as a result of the highly centralized nature of these processes, which leaves provincial administrations unable to make development decisions in line with local needs (Saltmarshe et al., 2011)

4. Conclusion

Finally, it can be said that according to the 2004 constitution, the system of government of Afghanistan is similar to presidential system, in which a number of principles are derived from the parliamentary system and most of them are derived from presidential.

More power of the executive than the legislature and the judiciary has overshadowed the separation and balance of power.

The executive has effective control over the judiciary which it can use to its advantage if necessary. Especially In interpreting the constitution and other laws. The president has the power to appoint and discharge other judges in addition to appoint the members and chairman of the Supreme Court. The legislature has a role in shaping the government, gives vote of confidence to the ministers and in return the government is accountable to the legislature for its actions. Ministers must give answer and descriptions from their affairs to legislator; If a minister Unable to convince members of the Wolesy Jirga (House of Representatives) they decide about the vote of no-confidence, the Constitution has remained silent on other responsibilities of government, for instance if the government doesn't accept no-confidence vote of Wolesy Jirga (House of Representatives) and allow the minister to continue his job in office, the legislature can do nothing.

As discussed earlier, a vote of no confidence was given to Foreign Minister Rangin Dad Farspanta during the rule of former President Karzai, why Karzai did not accept the no-confidence vote and allowed him to continue his job.

Not taking a crucial position on the dual citizenship of cabinet members was something else that the government and the legislature had put together and in practice had led to widespread corruption.

The qualification for the president, cabinet ministers, members of the National Assembly and the Supreme Court's High Council not to be convicted of crimes against humanity and felonies are another thing that has allowed the government to allow individuals who had committed Obvious crimes against the nation to enter, but he has not been trailed and convicted, for instance the previous president Ashraf Ghani nominated general Dustom as a first vice president, who was accused of most crimes and felonies.

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