



Nizāmnāma-i Asasi-e Daulat-e Aliyah-e Afghanistan (Constitution of the State of Afghanistan) 1923; A Clash of Modernity and Tradition

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Abstract

In 1923 the very first constitution in subcontinent was adopted in Afghanistan by Amir Amanullah, marking a significant milestone in the history of the Indian subcontinent and declaring independence of the country and introduced certain phenomenal reforms including free education, equality among the population irrespective of religion, creation of judicial system, grant of personal freedom and free press. Despite these progressive measures, the constitution maintained the monarchy and preserved the principle of hereditary. A constitution reflects the culture and ontology of the country. Afghan constitution soon put the country into a civil war and Amir Amanullah had to abdicate and flee the country. Using doctrinal methodology, this paper analyzes the making, reforms of the constitution and its subsequent failure through the lens of historicism and concludes with the hypothesis that modern reforms in an Islamic tribal society should not be imposed through a western concept of constitution. The study concludes with the hypothesis that modern reforms within Islamic tribal societies are unlikely to succeed if imposed through the framework of a Westernized constitutional model, suggesting that such changes must align with the cultural and historical realities of the society in question.

Keywords

Afghanistan Constitution, Islam, Modernization, Tribalism, Westernization

Introduction

Constitution by definition is the set of political principles by which a state is governed especially in relations to rights of the people. In almost all countries the constitution is in a written form, however United Kingdom is the sole exception where it is in form of a custom. Constitution is synonym with law that creates an impression of rigidity; something which has to be followed irrespective of the circumstances. At present time, rule of law, democracy, distribution of powers, fundamental rights are enshrined in constitutions and once adopted a constitutional amendment is a cumbersome, time consuming and a lengthy process (Spiro, 2024).

Historically one of the earliest form of laws are attributed to King Hammurabi of Assyria (Britannica 2024), they are 290 in number and regulates life of citizen on almost every subject of life such as marriage, adultery, business, slavery, property, officialdom, judiciary; the ontological perspective is based upon a 'tooth for a tooth'. Hammurabi Laws do not treat all citizens as equal rather there is a difference among free and slaves. In Greece which is taken as the cradle of western philosophy and politics the issue of constitutions seems to be an important one. Each city state had its own constitution. Aristotle who studied them wrote the very first book on constitution, *Constitution of Athens* (1890/330 B.C.E.), it gives a detail history of how the city states adopted constitutions and

how they were corrupted. Primarily it was rule of majority and this rule of majority was responsible for the death of Socrates as narrated by Plato. (399 B.C./ 2002). Aristotle thus classified form of government basing upon his research and to him democracy was the least favored.

Roman Empire is very rightly attributed to for formulating laws in an organized pattern. Romans had their 12 Tables, a collection of laws dating back to 500 B.C. and later Emperor Justinian in 300 A.D. formed a commission for compilation of all existing laws; which are now known as Justinian Codex. These laws remained as source of western laws for millennium and are still refereed in courts. Roman laws were based upon Christianity and all those who were not professing this were treated outside the laws and deprived of certain rights. Romans made judiciary a profession and thus the lawyers emerged as the interpreters of the written scripture and helped magistrates or judges in dispensing justice. Islam in 6th century emerged as a continuity of divine religions and brought new laws which were contradictory to the Roman Laws as well (Blume,2016). At the dawn of last millennium, world was by and large divided on the basis of religion and wars were undertaken to impose divine laws as followed by followers of particular religion. Mongols in 11th Century conquered, subjugate and almost destroyed these divine religions and resultantly Genghis Khan gave his own laws known as Vassa. In Europe, two distinct branches of laws and judiciary emerged, in United Kingdom the judges based their judgment taking into consideration the local customs and as such are known as Common Law, whereas the other school mainly in Germany and Rome, the reliance was upon the strict adherence to the written laws and as such is known as Civil Law (Lewis et al, 2024). In 18th Century, colonialism reached its apex with European powers subjugating the African, Asian and American population and states as their colony and introduced their own laws. In India, British were the powers and in Central Asia the Russia was the sovereign and this rivalry between these two powers put the Afghanistan into a security quagmire. There were wars between the British and Afghans in 1842, 1878 and in 1918. In 1923, Amir Amanullah presented the first ever constitution of Afghanistan. However, in 1928 King Amanullah had to leave the country in the face of public unrest, he never came back and his constitution was also replaced in 1932 (Sherman, 2006).

Objectives of the Study

This study aims to analyze Afghanistan's 1923 Constitution, focusing on its drafting process, the reforms it introduced, and their societal impact. It evaluates the causes of the constitution's failure, including its incompatibility with the traditional Islamic tribal structure, and the resulting civil unrest that led to Amir Amanullah's abdication. Using the lens of historicism, the study explores the tension between modernist reforms and traditional norms, proposing that successful constitutional reform in such societies must align with cultural and historical realities rather than adopt Western models.

Significance

The significance of this study lies in its exploration of the interplay between constitutional reform and traditional societal structures, using the 1923 Afghan Constitution as a case study. By analyzing the causes behind the failure of this landmark document, the study provides valuable insights into the challenges of implementing modern reforms in deeply rooted Islamic tribal societies. It contributes to the broader discourse on constitutional development in culturally diverse contexts, offering lessons on the importance of aligning legal and political reforms with societal values and historical realities. The findings of this study hold relevance for policymakers, historians, and legal scholars, emphasizing the need for culturally sensitive approaches to governance and reform in similar contexts.

Theoretical Framework.

Much has been theorized on the concept of law and constitution, as it affects the public and state thus a wide range of theories are available to be used as the 'lens'. Greek classic theories on politics and constitution like Plato's *Republic* and Aristotle's *Constitution of Athens (1891)*. Machiavelli's *Prince* which is a standard text on the art of governance by a prince. The works of John Locke, Hobbs, and Rousseau; it is infact the latter who stated 'man is born free yet everywhere in chain' (Rousseau 1762/1999). Karl Marx who wrote that history repeats itself first as a tragedy than as farce. In last century the Critical Theory or the Frankfurt school put forward the theory of Historicism, which implies that events and actions should be seen through the historical process and culture is a paramount fact in shaping the destiny of states. This was earlier echoed by Montesquieu in his *Spirit of Laws (Robin & Flynn, 2023)*. Thus, culture and history are the primary lens to understand the Afghanistan and the role of Amir Amanullah. Samuel Huntington in 1995 put forward the hypothesis of *Clash of Civilization*. This hypothesis is centered around the notion that civilizations do clash and

expanding Huntington's idea of civilization (Lucchese, 2015).

This paper examines the events in Afghanistan through the theoretical framework of a clash between two distinct civilizations: the Western civilization, which Amir Amanullah sought to introduce and institutionalize through the adoption of the (1923) Constitution, and the traditional Tribal or Islamic civilization deeply rooted in the societal fabric of Afghanistan. The analysis focuses on how Amir Amanullah's ambitious reforms, inspired by Western ideals of governance and modernization, collided with the entrenched norms, values, and structures of the Islamic tribal society, creating tensions that ultimately led to political instability and civil unrest.

History and Culture of Afghanistan (1748 - 1917)

Afghanistan is a landlocked country, in 1923 it was bordered by Russian Central Asia on west and north, China in north-east, British India on east and Iran on south. Afghanistan a state took birth in 1748 under Ahmad Shah Abdali, however from earliest era of civilization there are evidences that points to existence of nomadic tribes. Country is largely mountainous with little reservoir of water, no major river originates from it; thus, dependence and way of life is mostly livestock, and trade. Population from earliest days have been engaged in martial activities and even today are regarded as one of the finest warriors in the world. Society is built around the nucleus of tribe and tribes are divided ethnically and are mostly at war among each other. Islam from 800 A.D. has been the main rather the only religion being practiced (Maizland, L.2023). Afghan tribes are divided into the two main branches of Islam, the Sunni and Shia with former being in majority. Society remained conservative throughout its history with women being confined to household, however any indignation towards women is a serious crime as per the law of the land. Traditionally the Afghans have been following to the Pakhtunwali as the customary law (Maly,2010).

Modern History 1842-1917

British invaded Afghanistan in 1842 and 1878 bot wars had their roots in the Forward Policy and Great Game; an effort by the British to keep the Russians away from having any influence in Afghanistan; thus, Afghanistan became buffer state receiving subsidy from British India and in return surrendering its foreign policy. Afghan rulers called themselves as Amir and one family remained in power, The Barkhans with Dost Muhammad, Abdur Rehman, Habibullah ruling from 1842. In 1893, British India and Afghanistan reached an agreement to have a clear-cut area of interest and influence under this treaty known as Durand Treaty, Afghanistan ceded certain areas to British (Qayum et al,2017). In 1917, Amir Habibullah was assassinated and his son Amanullah became the Amir of Afghanistan through a coup, he soon initiated a war known in history as Third Anglo-Afghan War, a truce was reached in 1919 and later a treaty was signed in Kabul under which the Durand Line was rectified and British accepted the sovereignty of Afghanistan in foreign affairs. This made Amir Amanullah immensely popular. (Iqbal,2023) .

Reforms in Afghanistan prior to Constitution.

As Afghanistan remained free of colonialism thus the progress in social field was rather slow and limited. There are certain advantages of colonialism the chief being the spread of education as observed in India and Central Asia, followed by political activity, more participation of women in everyday life, increase opportunities for under privilege classes to have jobs etc. Still Afghanistan was partially affected with European way of life. The very first newspaper Shams Ul Nahar was published at Kabul in 1873 (Library Congress 1873) one example is opening of very first school at Kabul in 1911 known as Habibiya. Printing of newspapers was also allowed in 1910. (Hotak, 2018).

However, Amir remained the all-powerful without any check or balance or sharing of the power. Only restraint on him was the religion thus alcohol was neither consumed by Amir or any of his ministers, neither it was brewed or sold openly in Afghanistan. Same holds true for the eating taboos imposed by the religion and similar restrictions on the modesty of women were enforced thus a woman was seldom allowed to be outside her home without veil or purdah (Hashimzai, 2012).

History of first Afghanistan's constitution and its subsequent impact and reforms revolves around Amir and his queen. Suraya was one among the twenty odd children of Mahmood Tarzai, he had married a Syrian woman while being in exile. Syria being a part of Ottoman Empire was much more liberal than Afghanistan thus Suraya and her siblings were brought up in a westernized environment. It is a matter of fate that not only she but her elder sister was also married to the royal family of Afghanistan thus these two sisters played a pivotal role in the politics of Afghanistan (Katrak, 1929).

Nizāmnāma-i-Asasi-e Daulat-e `Aliyah-e Afghanistan 1923.

The Afghan constitution (1923) was approved by 872 members of Loya Jirga the grand assembly on 9 April 1923, later it was amended by same Jirga in 1924 and new constitution with amendments became effective on 29th January 1925. However, first the non-amended text will be analyzed and then causes for amendments will be highlighted. The constitution of Afghanistan rather simple in nature having only 73 clauses. The first seven clauses which may be taken as preamble deals with basic structure of the state. Afghanistan was declared as an independent and sovereign country with full autonomy in foreign affairs. Kabul was declared as the capital of the country, Amanullah was declared as the King, this was a major change from the past where the rulers used title of Amir. Furthermore, the kingship was officially declared as hereditary. This was already being in use thus nothing new, yet it now made it rather binding. King's name was also binding to be used in the Friday sermon across the country (Article, 7). This is rather unique to the Islamic states where the ruler's name is, if used in the Friday sermon gives not only legitimacy but also adds religious colour to it. King Amanullah was given all the powers, of making war and peace, commander in chief of military, amnesty, rewards and punishments all at his own discretions. Thus, King was the law. The most drastic was the Article 2, which gives religious freedom to the Hindus and Jews; this clause later became the bone of contention and resulted in constitutional amendment. King Amanullah Khan's goal of making Afghanistan a modern, centralized, and cohesive nation-state—inspired by international movements for modernization and state-building—was the main factor behind the approval of the 1923 Constitution of Afghanistan. King Amanullah aimed to align Afghanistan with new international norms after being greatly influenced by Mustafa Kemal Atatürk's secular, modernization-focused policies in Turkey. He sought to overcome the long-standing influence of tribal and religious leaders who had historically divided Afghan politics and frequently halted any attempts at centralization by enacting a codified constitution

Afghanistan's recent triumph in the Third Anglo-Afghan War (1919), which followed its complete independence from British rule, furthered Amanullah's goal to unite Afghans under a single, cohesive legal system. Being the first Afghan administration to achieve complete sovereignty, there was a sense of pride in the country and a sense of urgency to develop a formal legal and governance framework in order to cement this newfound independence. Therefore, it was believed that a constitution was necessary to create a centralized Afghan state, bring the nation together, and lessen regional inequalities (*Barthorp&Michae,2002*). Furthermore, in order to create a modernized Afghan state, Amanullah and his advisers looked to Western constitutional frameworks, especially those of Germany, France, and Turkey. The ambition to implement structured government that would formalize citizens' rights, enhance civil liberties and education, and advance the rule of law in a manner that was previously unknown to Afghan society resulted from these forces. Accordingly, the 1923 Constitution served as a guide for a forward-thinking Afghan society in addition to being a legal document. Amanullah aimed to transform Afghanistan from a tribal, dispersed society into a nation-state that could compete with other contemporary governments and take part in international affairs on an equal basis by establishing a codified system of laws (Rubin,1995).

General Rights of the Subjects (Articles 8-24).

These sixteen articles can be termed as the reforms as they abolished slavery and torture (Articles 9 & 24) promised free education for all Afghans (Article 14) allowed printing and publication of newspapers (Article 11), granted equal rights to all citizens (Article 16) and more importantly the privacy of home was made inviolable, none can enter a house without official warrant (Article 20). In a country where slavery was the norm and torture were used freely, these articles provided reforms in true sense. Free education was a much needed and at that time a novelty for many nations thus collectively the general provisions were earth breaking in every sense. Rest of the constitution deals with ministers, their appointments, working. Article 32 mentions that oral command from King to his ministers must be reduced to writings. Article 36 deals with government officials and they are to be selected basing on merit similarly Article 38 bounds these officials to obey only lawful command from their superiors. Article 39 provides for the establishment of state and provincial advisory council and in Article 41, it stipulates that half of these members to be elected by the public thus paving way for the free elections although it is not mentioned explicitly. There seems to be a repetition and duplication of authority between the state council and the ministers. Article 29 grants ministers to review the treaties and pacts with foreign states and similarly Article 49 also gives same powers to

state councils to review foreign treaties.

Judiciary is granted independence under Article 53 and establishment of high court is only permissible for the trial of ministers (Article 56). Financial affairs are being regulated in the forms of taxes and yearly budget (Articles 58&59). Provincial administration has been elaborated in detail by stressing that each and every official will work according to the clearly defined duties (Article 63). Martial Law as an option if there is a rebellion or disturbance, can be imposed in any province under Article 67. The last six articles of constitution are termed as miscellaneous and under them elementary education is made compulsory on the subjects, privacy of correspondence is assured under Article 73. Furthermore, the system of amendment in constitution is defined in Article 70.

Causes of Failure

Afghanistan's 1923 Constitution failed because King Amanullah Khan's ambitious modernizing program was overshadowed by a complicated web of political, social, religious, and economic issues. Tribal leaders' long-standing authority was one of the main challenges; they had long run their areas independently and saw the constitution's concentration of power as an existential danger to their influence and local authority. Tribal chiefs opposed the move toward a centralized, bureaucratic state that deprived them of autonomy because they were used to traditional governance and were suspicious of official meddling. Religious leaders' strong hostility to several of Amanullah's reforms—including women's rights, secular education, and changes to Islamic law—was exacerbated by their perception that they directly threatened Islamic teachings and customs. Religious resistance that portrayed the constitution as un-Islamic was fueled by the clerical class's worry that these secular reforms would weaken their hold on social and moral issues (Gregorian, 1969).

Afghanistan's socioeconomic environment, which is primarily rural and agrarian with little infrastructure, low literacy rates, and little economic development, was another important element. The nation lacked the administrative capabilities and resources required for the ambitious reforms. Reforms were essentially unenforceable in many places outside the capital due to Afghanistan's weak economic foundation, which made it difficult to fund such massive state-building initiatives. Furthermore, a lot of Afghans thought the reforms were culturally alien and unrelated to Afghan values. Amanullah enacted changes that felt sudden and foreign to a large portion of the populace, who were unprepared for such quick societal changes. These changes were influenced by European systems as well as Atatürk's secular reforms in Turkey.(Emadi, 1990).

Amanullah's government became even more isolated as a result of its inability to garner broad support or effectively explain the reforms' goal. The constitution widened already-existing gaps between the old Afghan society and the modernizing administration, rather than promoting a sense of national unity. Mass unrest resulted from this disconnect, and by 1929, there was a general uprising. Amanullah was eventually forced to abdicate, giving up both his kingdom and the reforms he had battled to enact due to growing opposition and his inability to put an end to the unrest. His downfall demonstrated the tremendous resistance of Afghanistan's tribal and religious structures to centralized reform initiatives and highlighted the challenge of enforcing quick modernization in a profoundly traditional nation (Khazeni,2004).

Divergent of impacts of 1923 Constitution of state of Afghanistan

Despite its brief existence, the 1923 Afghan Constitution had a significant impact on regional reform movements and Afghan governance. As the nation's first written constitution, it set the standard for subsequent Afghan constitutions and ingrained the idea of codified law and centralized government in the national psyche. Many aspects of this early constitution, such as organized legal structures, continued to be crucial in later constitutional processes, and succeeding Afghan authorities would look back on it as a basic experiment.

Similar reform conversations were spurred throughout the area by the constitution's introduction of contemporary governance in a historically decentralized society, which encouraged neighboring nations to think about constitutional governance as a means of striking a balance between traditional authority and centralized control.

Its failure also brought to light long-standing issues in Afghan government, particularly the continuous conflict between the autonomy of tribal and religious leaders and centralized authority, which has shaped Afghan politics for almost a century. In addition, the 1923 Constitution established structural foundations that shaped later attempts to establish a state, including parliamentary and judicial components, highlighting the need of formal institutions in spite of the ensuing cycles of

political instability. Therefore, even if Amanullah's vision did not fully take hold during his lifetime, it laid the foundation for later Afghan leaders to build upon in their own attempts to modernize and unite the nation.

Conclusion.

Despite its brief existence, the 1923 Afghan Constitution had a significant impact on regional reform movements and Afghan governance. As the nation's first written constitution, it set the standard for subsequent Afghan constitutions and ingrained the idea of codified law and centralized government in the national psyche. Many aspects of this early constitution, such as organized legal structures, continued to be crucial in later constitutional processes, and succeeding Afghan authorities would look back on it as a foundational experiment. The constitution introduced progressive reforms, including equal rights before the law, education for all, and the abolishment of slavery, which served as a blueprint for future modernization efforts.

The constitution's introduction of contemporary governance in a historically decentralized society spurred similar reform conversations throughout the region, encouraging neighboring nations to consider constitutional governance as a way to balance traditional authority with centralized control. Its influence extended beyond Afghanistan, inspiring debates about modernization, governance, and state-building across South and Central Asia. Furthermore, the document brought focus to the importance of codified rights, institutional accountability, and formal governance frameworks, ideas that would resonate in later political and legal developments in the broader region.

However, its failure also highlighted long-standing issues in Afghan governance, particularly the continuous conflict between the autonomy of tribal and religious leaders and centralized authority, a struggle that has shaped Afghan politics for almost a century. The Mangal rebellion, which forced amendments to the constitution, revealed the deep cultural and religious sensitivities that any reformist agenda would need to navigate. The constitution also faced criticism for provisions like the imposition of special taxes and distinctive dress codes on minorities, underscoring challenges in achieving inclusivity.

Additionally, the 1923 Constitution established structural foundations that shaped later attempts to build a modern state, including parliamentary and judicial components. By emphasizing the importance of formal institutions, it underscored the need for a cohesive legal framework even amidst cycles of political instability. These institutions would serve as references for future Afghan leaders striving to modernize and stabilize the nation.

In conclusion, while the 1923 Constitution was short-lived, its legacy endured as a catalyst for governance reforms and a model for subsequent constitutional endeavors. Amanullah's vision, though unrealized in his time, laid the groundwork for future efforts to modernize and unify Afghanistan, marking an enduring milestone in the country's complex journey toward state-building and reform.

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