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**The Constitutional
Failures in Afghanistan:
A Narrative of Agonising
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Sayed Qudrat Hashimy*

ABSTRACT

Afghan constitutions fell because these constitutions were the regime's constitution and not the Afghan people's constitution. Each regime had its constitution, and all these constitutions were adopted in shrowded secrecy without a public referendum or inclusive public participation. The country was simply ungovernable; each regime collapsed because it lacked legitimacy in the eyes of the people. In this article, the study examines the chronicle failure of the Constitutions in Afghanistan by highlighting the Afghanistan experience with the Constitutions 1923 and 1931, Constitution 1964, and Constitution 2004, which all serve as the core for the present discourse. The contention of this paper is to explain the causes of constitutional failure in the context of political transition. The premise of this paper is to overview the constitutional crisis over the last 98 years. The study employed doctrinal legal research in which normative approaches were to evaluate the literature to acquire the required legal propositions. The literature gathered and used in this study will include secondary, primary, and legal documents. This qualitative explorative study aims to analyse the constitutional failure and demise of constitutionalism. This study mined all types of relevant materials that have been

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published, including written manifestos, books and articles.

Keywords: Constitutional Failure, Constitutional Crisis, Constitutionalism and Demise of Constitutionalism

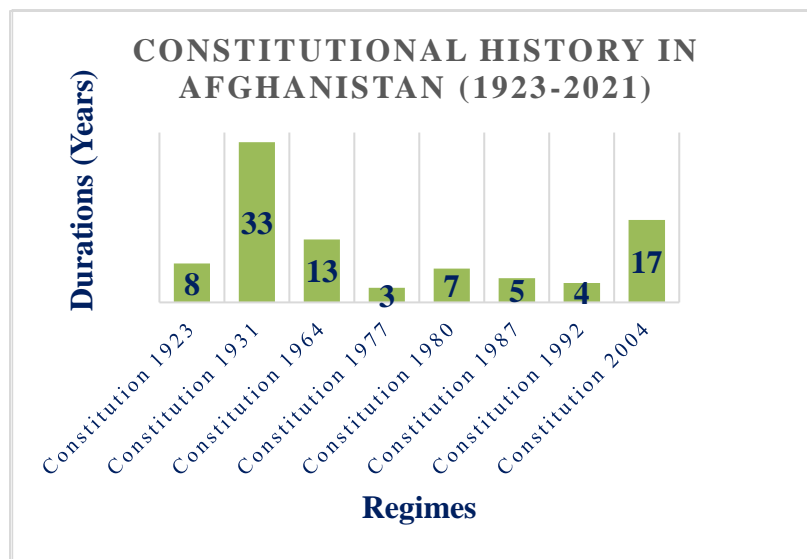
Introduction

State constitutions must be more than mere "parchment barriers"; rather, they must be fundamental sources of a constitutional order that establishes and motivates governance mechanisms to advance sound public policy and win broad support,¹ only then will state constitutions be meaningful in carrying out the aforementioned functions. Understanding state constitutional failure requires asking the fundamental question of what purpose does the state constitution serve.² The literature on constitutionalism makes learning these components easier to ponder: What causes a constitution to fail? And given what the constitution aims to be, how can we evaluate the requirements for and possibility of such failures in the most effective way? How do we assess the Constitution's success, to put the question the other way around? It is challenging to gain progress on the issue of how to define constitutional failure or, more importantly, whether such a measurement is even a worthwhile endeavor. After such a system has collapsed, formally or for all practical purposes, analysis of the downfall and collapse of a republic begins in earnest.³ Making a clear distinction between minor mistakes and serious errors in a text that otherwise succeeds would allow us to think about constitutional change tactics more constructively. The nature and extent of the issues that require attention must be the starting point for reform initiatives.⁴ The mechanisms of state government are unquestionably buckling under heavy pressure, and the chances for improvement depend on sophisticated attempts to reform constitutional governance.⁵

Since 1747, Afghanistan has been involved in tussles over state buildings.⁶ The country had eight multiple forms of constitutions in the past ninety-eight years' but has little experience. Violation of the Constitution and failure of the regime is common in Afghanistan's constitutional history. The last ninety-eight years have witnessed various constitutions in the context of the new head of state. Each form of the constitution has been marked by its unique form of government, rationalizing discourses, and legitimizing ideologies. This study addresses transformation and

developmentalism broadly and is summed up as democratic, republic, communist, and Western forms of the constitution in Afghanistan. I began to split each constitution as it was perceived as basic underlying documents by each regime. This stratification is neither successive nor does it correspond strictly to historical periodization.

To state that it is not correct that Afghanistan did not have a constitution. She had multiple forms of constitution, in the absence of constitutionalism and the rule of law.⁷ The anachronistic super structure foisted on a despotic foundation of the government. Afghanistan switched to a presidential system form of government in 2003, where the president served as both the head of state and the supreme commander of the armed forces. (The Imperial leader). The executive was clothed with unchecked discretionary power, while the court had little actual power to make laws and tended to be excessively executive-minded.⁸ There was the concentration of power, on the one hand, without any principle of check and balance.⁹ The constitution included the provision of human rights,¹⁰ yet with little in practice. Violations of human rights were massive, often by warlords and government officials.¹¹ The past cannot be changed, and there is cause to think that Afghan civilians, republican elites, and their international supporters would fight against a negotiated solution that jeopardizes the gains made in terms of human rights and political participation.



This article explores how Afghanistan's constitutions have failed and how these issues have had a detrimental effect on the country. Normally, we cannot advance to a rational evaluation of constitutional failure until we have a clear grasp of the role of state constitutions and how their design and implementation attempt to fulfill these roles. Part I sets the foundation for an inquiry into how and why the 1923 and 1931 constitutions had failed by examining certain fundamentals of constitutionalism and constitutional function.

Part II sets out the unique features and sheds light on the foundation and failure of the 1964 constitution. Part III examines a cursory glance at the 1977, 1987, and 1992 Afghan Constitutions. Finally, Part IV presents how the 2004 Constitution was drafted and how its provision was violated, and how it failed in a mid of the Afghanistan crisis.

Constitution, 1923

Afghans waged their third and last war against the British Indian Empire in May 1919, a little more than six months after the conclusion of World War I.¹² Under the direction of King Amanullah Khan, public thinkers like Mahmud Tarzi, and generals like Nadir Khan, Afghan constitutionalists were able to wrest control of Afghanistan and start the process of forming an autonomous Afghan state. In 1922 and 1923, A group of constitutionalists and progressive notable figures, including liberal religious experts, drafted the constitution, known as the *Nizamnamah-ye-Asasi-e-Dawlat-e-Afghanistan*. The first primordial constitution of 1923 was a product of promulgation by King Amanullah Khan. These constitutions were structured on twin pillars of Islam which are the Quran and the Hadith. The monarch was entrusted with all the state power. As scholars have often observed, it was marked by the absence of public participation in a state-based constitution. The ulema had given Amanullah Khan their support due to his extensive use of Islamic symbols and rhetoric, especially the declaration of jihad against the British and, more broadly, the king's pan-Islamic leanings.¹³

The *Shura-e-Waziran* (the king's cabinet), and the *Shura-e-Dawlat* (the state council), were established by the 1923 constitution.¹⁴ A representative democracy was advocated by constitutionalists, but it was never realized.¹⁵ The official religion was declared to be Islam, and minorities were given protection

(Arts. 2, 8, and 15).¹⁶ The king would uphold and encourage the application of Sharia rules while ruling in conformity with Sharia (Art. 4). (Art. 6).¹⁷ However, in reality, neither the ulema nor the qazis were represented on the state council or the council of ministers, which produced and passed laws (religious judges). The Afghan constitution of 1923 was overthrown by the Khost rebellion in 1924 and the uprising against Amanullah Khan in 1929.¹⁸ A new military draught and a progressive tax that infuriated many religious and tribal elites led to the Khost rebellion's inception. These practices were viewed as unorthodox by Mullahs (religious authorities) in the east, and the rebellion swiftly intensified.

After a year of conflict, Amanullah Khan's reputation as a national independence hero began to decline. In 1926–1927, Amanullah Khan travelled to Europe after putting an end to the uprising.¹⁹ Upon his return, he unveiled plans to democratize Afghanistan, secularise the government, mandate primary education, uphold monogamy, and emancipate women in front of an audience of over 1,000 notables.²⁰ With the support of national religious leaders, this tribal assembly rejected these suggestions. A smaller jirga led by Amanullah Khan and composed of roughly 100 followers passed his amendments.²¹ This directly sparked a violent uprising as various groups across the nation, including tribal elites and the ulema, rose up against the monarch's changes that had been implemented without the consent of the people or the elite.²² In 1929, Habibullah Kalakani, also known as Bacha I Saqao, assumed the throne and ruled for about a year.²³ Kalakani emphasized the religious nature of the uprising against the reformist monarch.

Nadir Khan once served as Amanullah Khan's minister of war and is distantly related to the king's family by marriage. Still, for years he had fought the king's attempts to modernize Afghanistan as quickly as possible. Nadir Khan's leadership was crucial in establishing a lasting political system since he had direct experience with the adverse effects of Amanullah Khan's rapid development. After splitting from Amanullah Khan in 1926, He supervised an army of militias assembled from all over Afghanistan, primarily from eastern Pashtun tribes, during the civil war in 1929.²⁴

Notwithstanding Nadir Khan's opposition to Amanullah Khan's rapid modernization, the objectives of this campaign were to

overthrow Kalakani and reinstate the monarchy under Nadir Khan rather than to halt modernity completely. Some forces were waging a general war against modernization. Many *Ulemas* had argued that the Nizamnama's legal reforms were incompatible with Islam as early as 1923, and their agitation fueled the Khost uprising. The religious elite's attitude was crucial in bringing down Amanullah Khan in 1929. Even though Amanullah Khan faced strong religious opposition, Nadir Khan's winning coalition was a royalist and moderate compared to the ulema and Kalakani. The idea that Nadir Khan's ascent to power and his subsequent constitutional order was the consequence of a rebellion against modernity is debunked by the fact that a royalist insider won the battle. Ulema and tribes fought against monarchical reform at the beginning of the Civil War. on the other hand, Nadir Khan and his alliance were more committed to progressive change than religious conservatism. Finally, Afghans made peace with one another and ended a conflict that threatened to destabilize the Afghan state, which had been founded by Abdur Rahman Khan in 1880 and was still being upheld by his heirs.²⁵

Constitution, 1931

The long-lasting constitution in Afghanistan that endured for long is the one from 1931. It lasted 33 years (1931–1964), which is 33 years longer than the average duration of written constitutions worldwide. One key indicator of the 1931 Constitution's success is how long it has lasted. A short-lived constitution (the 1923 Constitution) that had opponents continually refused to accept the order it created and staged a series of rebellions that resulted in the collapse of the 1923 Constitution and the government before the creation of the 1931 Constitution.²⁶

On October 31, 1931, the second Afghan constitution came into effect. It represented the earlier opposition to Amanullah's reformist politics. Nadir Shah, the new ruler, was assisted by the Pashtun Tribes in assuming power. In order to gain the support of the tribes and the religious authorities and to increase his level of power, he took a conservative course during his reign. As a result, he changed the secular innovations of his predecessor and advocated for an emphasis on Islam, as stated in various articles.

Nadir Khan assembled a loyal jirga of almost 300 notables in 1930.²⁷ He was crowned king of Afghanistan by this assembly, and the notables chose 105 of its members to serve on a national

council. In October 1931, this council ratified the constitution. The constitution had 110 articles divided into 16 sections and was based on the constitution of 1923, albeit with significant changes. The constitutional accommodationist produced a strong state with the potential to pursue modernization more slowly while also appeasing the conservative forces and religious elite. Broadly speaking, the wording of the constitution was quite religious: Islam was a significant theme in everything from state oaths to several repugnancy clauses, which said that regulations "shall not be in opposition with the teachings of Islam." ²⁸

In contrast to the 1931 constitution, where Islam was an alternative to statutory law and established its bounds, Islam was the state religion in the 1923 constitution but was also secondary to that law. Sharia and Islam were prioritized through numerous repugnancy clauses and other religious clauses in creating laws and legal procedures; for instance, Article 65 specifies that "[articles passed by the assembly] must not defy the prescriptions of the faith of Islam." ²⁹

Articles of the constitution, including Article 22, placed all schools in Afghanistan under government control to guarantee that "education and teaching is not opposed to Islamic ideas and precepts, and conforms with scientific, artistic, and scientific objectives."³⁰ The state's jurisdiction over all schools and the pledge to utilize that control to make sure that instruction did not conflict with Islamic beliefs and precepts are the two components of Article 22 that best exemplify the constitution's attitude to state power and concession. While acknowledging continued deference to Islam, one essay proposed a significant improvement.

The government established a network of national madrassas and, later, Sharia colleges within the national university system to further foster progressive progression within the Hanafi legal system. Compared to the ulema that was autonomous of the state in the 1930s, those who emerged from these institutions were typically more liberal. And, by and large, they did not oppose measures like the government's support for removing the veil in the late 1950s. Even though there were riots in Kandahar and some mullahs opposed the reforms, the vast majority of ulema did not oppose the state's reform, notably about veiling.

The religious rank of the ulema was not the only factor in their authority; they also had control over the tribal militias they could

mobilize. Tribal troops were the military force that, at the ulema's urge and with their backing, might topple the government. Since the religious and tribal elite had resisted Amanullah Khan's tax and conscription regulations a decade earlier, the monarchy's deferral on taxation, conscription, and the press signified an accommodation of those elites.³¹In practice, all of these matters were governed by "special laws," leaving them up to continuous negotiations that might involve groups who weren't present in the gathering of around 100 notables who ratified the constitution.

The provision in Article 102 stating that provincial administration will be regulated by decentralization and the distribution of tasks and responsibilities was the most significant concession to non-state elites. "Provincial administration is founded on three key rules: 1) the decentralization of authority; 2) the division of powers; and 3) the explicit delineation of obligations.

The benefit of establishing decentralization as a philosophy rather than a formal rule was a deferral of the details and an elevation of the principles that would govern subsequent intra-elite negotiation. The state's ability to interfere in the event of revolt is likewise guaranteed by Article 104 of the Constitution. As a result, both provincial independence and state power were ensured. As less centralized control over the provinces meant more of a role for the ulema, this move was also in their advantage. State decentralization favored the tribal and religious elite outside of the Kabul "enclave."

In order to accommodate the tribal and religious elite, economic changes were also implemented. For instance, Articles 45 and 46 granted the government the authority to reorganize the Afghan economy, which had been lurching from crisis to crisis ever since the country's independence. In accordance with Articles 45 and 46, the parliament, known as the Shura-ye Melli, was given authority over the creation of both public and private corporations as well as the approval of granting commercial and industrial privileges. This resulted in the development of the Sherkat (company) system, a crucial accommodationist component of the new order of Nadir Khan, whereby the Afghan government would manage many corporate operations and control 45–50% of a company's stock. By making this change, Amanullah Khan's controversial progressive tax was replaced with income from the commercial sector rather than a levy on the tribal and religious elite. The decision to finance

the state through exports rather than agriculture is an illustration of intra-elite negotiation through economic accommodation. This shift convinced conservative elites and tribal forces hostile to Amanullah Khan's tax reforms to support Nadir Khan's economic plan. For three decades, issues were largely settled peacefully thanks to the 1931 constitution. A policy that valued non-confrontation with the religious, and especially conservative, elite was necessary for the state to be able to bring about long-lasting social, political, or economic reform.

The 1931 constitution, played a crucial role in bringing about this peace. Through a variety of procedures for inclusion and accommodation, this document would help to maintain stability and promote modernization and reform.³²

The 1931 constitution accommodated major parties and views in terms of both procedure and content, especially those of the religious elite that had opposed previous Afghan governments. The manifesto achieved this by carefully balancing statism against decentralization while also balancing reform against conservative religious concerns. In order to establish permanent peace, religious inclusion and reform were the key conditions of stakeholders, including the ulema (clerics) and tribal key figures. Henceforth, a harmonious relationship between modernists, traditional religious leaders (ulema), tribes, and the monarchy was made possible by the constitution of 1931. In essence, relevant elites were coordinated to achieve an equilibrium where each group benefited more from upholding the constitution than from opposing it.

The fact that the 1931 constitution has survived so long demonstrates that successful Afghan constitutions marry inclusion with a gradualist development program and are at the very least minimally acceptable to all stakeholders. The 1931 manifesto allowed for informal, decentralized forms of governance, power-sharing, and traditional influence through nominations while making compromises or delaying decisions on contentious matters from the previous decade.

The repugnancy clauses and deferral clauses were two crucial components of the 1931 constitution that made it easier to reach a coordinated equilibrium. Tribal chiefs, clerics, and other disgruntled sections of the people supported this constitution even though the 1931 process did not involve the participation of the largest Loya jirga or the participation of the grassroots. The 1931

document deferred or provided concessions on the contentious issues from the previous decade. It should be emphasized that the 1931 document carried over some accommodationist revisions while maintaining the 1926 amendments.

The 1931 document, which was in some ways an expansion of the 1926 reforms, was written just over three and a half years after those changes went into effect. The 1931 constitution's concessions and delays appeased those who had assisted in overthrowing Amanullah Khan two years earlier. At the same time, the agreement contained several clauses that would be crucial to Afghanistan's modernization during the following 30 years, including measures for women's rights advancement, economic growth, and educational reform. However, the legislatures had no authority to enact legislation; they could only submit recommendations to the king. However, this new administration style gradually brought about changes like allowing press freedom and giving the Afghan people more privileges.

Thus, The constitution not only used religious terminology but also gave the clerical class actual power. The 1931 constitution gave the monarch and the ulema equal sovereignty, in contrast to the 1923 constitution. Coordination entails both accommodation (via concessions and power-sharing) and inclusion (by allowing for the participation of important stakeholders in the negotiation process). Despite its unprecedented durability, the 1931 constitution has gotten little attention from the general public since it was overwhelmed by the 1964 constitution, which served as the model for the 2004 constitution.

Constitutional Democracy, 1964

The 1964 constitution already set itself apart from its forerunners in terms of how it came into being: first, because it was not imposed upon the people, and second, because the public was allowed to take part in it through the use of press releases rather than being presented with already-completed facts. The judicial system needed reforming, which was one of Zahir Shah's goals.³³ The constitution also included democratic elements, such as the ability to create political parties, and did not only attempt to centralize the government (article 32).³⁴ The king promulgated the third constitution in 1963,³⁵ the country enjoyed relative economic growth and political stability. King Zahir Shah was the monarch of Afghanistan for thirty years, and he initiated the new monarchical

constitution with democratic values.³⁶The constitution of 1964 was ratified in Grand Assembly (Loy Jirga).³⁷It was the only constitution in Afghanistan drafted in consultation with the people from across the section of Afghan society. The deliberation and negotiations for the same took over eight months. This was the era where democratic values, for the first time, were embraced by the constitution in Afghanistan.³⁸The constitution provided provisions for the election of the populace representative in the parliament, city council, provincial advisory council, and independent legislature.³⁹

A constitutional monarchy was established under the constitution of 1964. It established a government based on the people's sovereignty rather than on religion, separating religion for the first time from the state's governing institutions. But Islam remained the state religion of the nation.

Republican Constitution, 1977

Sardar Dawood Khan served as a Prime Minister for ten years (1953-1963). Later in 1973, after a coup threw monarch by a coup d'état, he became the first president of Afghanistan. In 1977 he suspended the Monarchical Constitution of 1964 and declared a republican system of administration.

A new republican constitution was crafted without public consultation. However, due to turmoil against the republic regime, the president was overthrown by a communist coup.

Afghanistan was declared a republic, and the constitution eliminated the monarchy. However, Daoud was overthrown following a coup before the constitution could take effect. The new administration, a politburo in the Soviet manner, disregarded legislation and instead ruled by decree without the participation of the populace. Laws were revised to guarantee equal rights for women, equitable land distribution, and compulsory literacy, and several decrees were made.

Afghanistan has yet to emerge from the social and political abyss that the communists took over in April 1978 threw it into. Its origins were varied, but it is crucial to immediately emphasize that it was not a result of any need for revolutionary change on the part of the vast majority of Afghans. Instead, it revealed a profound rift within Kabul's political elite. The advent of radical political movements during the 'New Democracy' era, which lasted from 1964 to 1973, was the origin of this split. Despite their fierce rivalry, the *Khalq*

('Masses') and *Parcham* ('Banner') factions of two Marxist organizations merged to become the People's Democratic Party of Afghanistan during this time (PDPA).

The 1977 Constitution, which Dawood adopted, was a transient constitution. With its provision for a presidential form of government within a single system, the 1977 Constitution imported an authoritarian style of government into Afghanistan. Dawood's 1973 Constitution likewise failed to resolve political disputes through formal constitutional institutions because it made no provision for any such institutions. All facets of the state and the administration, including its institutions, were controlled by Dawood.

Communist Constitution, 1980

The republic constitution was revoked, Babrak Karmal promulgated a new Communist Constitution, and he was the pioneer of Marxism and leftists in Afghanistan.⁴⁰ Nevertheless, at this time, the Soviet troops occupied Afghanistan and engaged in a brutal war.

Dr. Najibullah's Constitution, 1987

After years of conflict and tussles to gain legitimacy, the Najib regime introduced a new constitution in 1987.⁴¹ To create updated economic and political rules that the majority of Afghans, including the armed mujahidin opposition, may be ready to accept, the 1987 Constitution was drafted.⁴² Another goal of the 1987 Constitutional Amendment was establishing legal mechanisms to resolve political disputes.⁴³ The opposition to the government, which was winning big battles in the countryside, was adamant about keeping their weapons.⁴⁴

Mujahidin Constitution, 1992

In 1990, after the Soviet withdrawal, Mujahidin replaced Dr. Najib Constitution and introduced a new constitution. In 1992, due to the brutal civil war in Afghanistan Kabul government was eliminated, and the Taliban regime took over. This Taliban regime 1.0 did not initiate any constitution, and the regime has ruled the country based on the whims and fancy of the gun, arbitrariness, and every Taliban member being above the law.⁴⁵ In 2001, the USA invaded Afghanistan,⁴⁶ and in the latest part of 2003, Afghanistan ratified a new constitution called as 2004 constitution. However, this constitution was violated brick by brick, and ultimately, the constitution failed to breathe in such a decaying situation without a

spirit of constitutionalism.⁴⁷The Taliban regime 2.0 surged back after twenty years of conflicts with the US and has not yet promulgated any new form of constitution.

Constitution, 2004

The 2004 constitution shares certain advantages with the one from 1931,⁴⁸but it also has some distinctive defects.⁴⁹By clearly stating that Islam is the official religion and incorporating a repugnant phrase on the restricting role of "Islamic tenants and provisions," the 2004 constitution struck a balance with the hard-line clerical class.⁵⁰The 2004 constitution included a mention of Hanafi legal doctrine.⁵¹However, the Taliban's exclusion from the constitution-writing process primarily due to Western pressure undermined this equilibrium and accommodation.⁵²This omission may partly explain the Taliban's continued opposition to the Karzai and Ghani administrations. Drafting a new constitution for Afghanistan was necessary but sufficient steps could have been taken to consider the rule of law,⁵³constitutionalism,⁵⁴and comparative constitutional implementation in other post-conflict states.⁵⁵ The Afghanistan constitution-making process began on December 14, 2003, and was ratified by January 4, 2004.⁵⁶Nevertheless, this constitution was drafted with tussles, not over the ideals of the rule of law or the basic structure of the constitution but over ideas, words, and amendments. This constitution remained a mere piece of paper without any spirit. Constitution served as the corpus of the law and not the essence of the law to serve as the Grundorm. Constitution making in 2004 was an opportunity to build legitimacy and a foundation for transparent governance for eternity in Afghanistan.⁵⁷However, the Constitution was made in secrecy, haste, and intimidation without a public referendum or Afghan people bargaining for their future.⁵⁸Constitution 2004 has several flaws;⁵⁹the first flaw of Constitution 2004 lies in its making procedures. It has been made with shrouded secrecy without a public referendum. Even though the country has endured a devastated civil war, it was an excellent opportunity to have crafted 'the Constitution for Afghanistan,' not merely establish a statute for a confederation of warlords. The second drawback is said to be the hasty-making process. The constituent members were warlords and power brokers who had the experience to wage a civil war and not the statesmen to determine the future of a war-broken state. The Constituent Assembly member could have referred to Germany's constitutional-making process when Germany refrained from

adopting the American presidential form of government and did not want to prepare for a new Adolf Hitler.⁶⁰ Similarly, Japan did not embrace the American presidential form of government as the price of her defeat. Nevertheless, the United States exerted considerable influence on Japan in the Japan-American post-war era.⁶¹ Afghanistan is a patchwork of multiple ethnicities; It can be administered through a decentralized form of government.⁶² In order to prevent the abuse of power,⁶³ decentralization of power serves as the best solution for Afghanistan. Looking at the Swiss separation of power,⁶⁴ Afghanistan could be divided into four cantons, and power should be distributed through a check and balance policy. Furthermore, the Parliamentary form of government suits the situation of Afghanistan, and the ethics of Afghanistan could be included, and they can bargain for the socio-economic differences.⁶⁵ The third shortcoming is the conflict of interest. Commonly, the constitution in Afghanistan was made by the whim and fancies of the state, and that could be called the state constitution and not a document that reflects general will. The 2004 constitution is ambiguous with separation and balance of power.⁶⁶ The fourth defect is the concentration of power in a single hand. Although heads of state in the past have experienced *coup d'etat* during the history of Afghanistan. Yet the same people relied on the single executive solid power.⁶⁷ For instance, the president could decide on any constitutional matters.⁶⁸ For example, the extension of the Lower House (Wolesi Jirga) term by not conducting an election was a clear violation of the democratic constitution.⁶⁹ Furthermore, in March 2020, both Dr Abdullah Abdullah and Ashraf Ghani claimed that they had won the election,⁷⁰ declared themselves as the legitimate president, and signed a memorandum of understanding for power (MOUP) (that includes the division of power, distribution of public resources and appointment of Governors, Ministers, Judge of Supreme court) this cleavage of power has fuelled corruption. It was a violation of the constitution by the same people who claimed to be patriotic. Both presidents (Ghani and Karzai did not punish the warlords) for committing war crimes in Afghanistan,⁷¹ it can also be called a violation of the constitution of Afghanistan.

Interestingly, the Constitution of 2004 was dubbed with Euro-centric approach to democratic values.⁷² Nevertheless, the country has experienced the worst election system. Elections in Afghanistan have been marred by violence, corruption, nepotism,

and ethnicism ideologies. It is noted that these constitutions showed dissatisfaction with democracy.⁷³ Just during President Hamid Karzai, there has been a relatively peaceful transition from the incumbent to a successor, President Ashraf Ghani. Failure of the Constitution in Afghanistan was expected as it lacked government support, and the court never stood as the guardian of the Constitution. However, other factors contributed to so-called anti-constitutionalism besides internal resistance and the fight against peace and public tranquillity by internal power brokers, repression, crippling poverty, economic crisis, and corruption.⁷⁴ These all severely suppressed and crushed the government, which became the regime's failure.⁷⁵ Henceforth, the constitution-making process gave the warlords vast discretionary power and they drafted virtually without any public referendum. For most Afghans, the fundamental rights outlined in the constitution and other statutes are merely on paper because the rule of law is still pitifully weak.⁷⁶ Human rights violations are common in Afghanistan.⁷⁷

Conclusion

Most of these constitutions' experiments had aspects in common like minimal public engagement, the patrons of the new constitution, who were often the head of state, authoritarian politics remained firmly entrenched, and power was intensely concentrated in the head of state.

A written constitution's effectiveness can be evaluated using several metrics, including how well it supports democracy, gives the state legitimacy, encourages education, makes it easier for the general public to participate in politics, channels political conflict through formal institutions, and adjusts with time. The 1931 Constitution stands out as the only Afghan constitution that did noticeably well on most of these criteria, although other Afghan constitutions, with the possible exception of the 2004 Constitution, which is still in effect, performed poorly on all of them. In addition to granting public authorities the right to exercise power, state constitutions also aim to set reasonable restraints on such power. Power is also limited through specific limits on decision outcomes achieved by people in power" when focusing on the public authority established by the constitution. The primary purpose of state constitutions is to establish institutions that exercise public power on behalf of the state and develop the rules of the game in which these institutions must play. State constitutions generally do

this in two ways. First, state constitutions define the franchise, defining whose interests are essential for determining state policy. In a similar vein, state constitutions and the institutions they form enable channels for people to access political influence and power. Only state residents have the right to vote in state elections. Therefore, state political leaders will, to the extent possible, represent their interests, probably at the expense of those who are only passing through.

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