

Investigating the Evolution of Legislation in Afghanistan

Senior Teaching Assistant Mahbubullah Ruhani
Teaching Assistant Abdul Salim Ehsan

Lecturers of Prosecution and Judgement Department, Law and Political Sciences Faculty,
Kunduz University

Abstract

The existence of law in a society is one of the inevitabilities. In no society, especially in civilized societies, can a dignified and orderly life continue without the existence of law and the consolidation of its rule, and society can have led to progress and development. In this article, we explain the evolution of legislation in Afghanistan and examine the political history of Afghanistan in the last century; A history that has been experienced by various regimes, from monarchy to absolute monarchy, from constitutional monarchy to republic, and from democratic republic to emirate and Islamic republic. This article answers to this question with a descriptive-analytical method, when did the legislation in Afghanistan start and what ups and downs did it go through? The findings of this article show that the history of legislation in Afghanistan dates back to be about a century ago and this issue has been addressed in different periods with different approaches and principles.

Key words: Legislation, Statute, Articles of Association, Law, Constitution of Afghanistan

Introduction

The evolution of legislation in Afghanistan, unlike other countries, has gone through many ups and downs. In Afghanistan, it was customary that with the overthrow of the ruling regime and the replacement of the regime and other rulers, most of the enacted laws were repealed and the new government did not accept the laws of the previous government in any way. This would lead to anarchy and disorder in the Afghan legal system on the one hand, and to confuse law enforcement and the people on the other, but what is important is what sets the Afghan legal system apart from previous eras. It seems from the Amani period, that the will of the leaders of this country has been in a way of law and order.

From its inception until the time of Shah Amanullah Khan, Afghanistan was governed by the Qur'an and Sunnah, Hanafi jurisprudence, custom and the will of the people. This country after gaining its independence from the British.

Taking other corrective measures in the legal field has also taken important steps that are unprecedented in their kind. However, history proves that before this period, in addition to Islamic law and interactive law, there were a handful of laws in various fields. These laws were mainly drafted by the rulers of the time to regulate administrative and governance affairs, but the law has never been in the modern sense to be formulated and passed in a specific process, so it is worth reviewing the history of legislation in Afghanistan to begin. To know its evolution. Afghanistan has experienced various regimes from that time up to now like: from monarchy to absolute monarchy, from constitutional monarchy to republic. Which some of that law wasn't convinced for the people of AFG. And now our people composed a government which we can called democracy, which they want to choose who should be sitting in the chair of presidential that we can called the Islamic Republic of Afghanistan.

The research of methods: It's be studying the different books which help to write this topic.

The research of importance: Why I do this research? Because I want to clear for my people which how was the legislations in the past? And I do clear which my country has spent various regimes which the people suffered and struggled against.

The research of aims: One of the important aims of this research is to promote my scientific step. And I have shown which Afghanistan has spent various regimes which was not good in the past.

The research of Aims: One of the main aims that this research has to promote the rank of lecturers in the University.

From an absolute monarchy to a constitutional monarchy

Until 1973, a hereditary monarchy was in place in Afghanistan. Ahmad Shah Durrani, after assuming power, recognized the sole authority for major decisions, the Consultative Assembly (Loya Jirga), which was established by the Loya Jirga in 1747 AD) was appointed King of Afghanistan.

From its inception until 1923, the government of Afghanistan lacked the so-called modern laws, during which the Shah had absolute power and the Shah's orders were enforced as an inevitable decree. They were judged according to Hanafi jurisprudence. The only action that took place during the reign of Ahmad Shah Durrani (1747-1773 AD) and was able to fill the legal gaps and come in the form of a text, was a collection of fatwas of scholars that was collected and compiled under the title "Fatwa of Ahmad Shahi" which is the status of law. Had a cod.

After Ahmad Shah Abdali, during the reign of Timur Shah and his sons, the same principles were followed and one of the scholars of the time named Aziz al-Din was appointed to formulate the laws as the trustee of the laws [8].

Then in the time of Amir Shir Ali Khan (1863-1878 AD) to overcome the problems and disorders of governance and also to strengthen discipline among soldiers and prevent crime between military (military) and civilian citizens a series called "Fatwa of Amiri" or "Description of Crimes" was prepared and compiled by Judge Abdul Qadir using authentic jurisprudential books.

During the reign of Amir Abdul Rahman Khan, some laws were formulated and amended to regulate government affairs and administrative and judicial affairs, so that the instructions of the governors, the basis of judges, the calculation of religion and the contents of the emir's secretary, were compiled and approved at this time. However, these actions were never on his agenda as a representative of a formal constitution that exercised state power.

During the reign of Amir Habibullah Khan (1901-1919 AD), they also decided to establish regulations in the form of regulations for the administration of administrative, judicial, personal status, education, customs, nutrition, etc. The education system, the identity card system (national identity card), the marriage and marriage system, the customs system, the clothing system and the clothing and nutrition system are considered as the legislative collections of Amir Habibullah Khan's period. In addition, the book "Siraj al-Ahkam fi Ma'alam al-Islam" was written and published by the "amount of Sharia research" in Kabul. This book was the source of judgment and

most lawsuits were settled based on this book, which is the result of this period. Amir Habibullah Khan also established a small legislature called "Shuri" [9]

From Constitutional Monarchy to Democratic Republican

After Amir Habibullah Khan, his son Amanullah came to power in 1919 and brought about fundamental changes, the most important of which was the formal independence of Afghanistan from Great Britain after the Third Afghan-British War (Rawalpindi Treaty, August 8, 1919). Is considered. Thus, Afghanistan became one of the first independent Islamic countries in the modern era and the first Muslim state to become a member of the League of Nations.

At the beginning of the declaration of independence, Amanullah Khan emphasized the rule of law and declared: "After this law, the government can take over." The achievements of this period are the Council of Science, the Council of State and the Legislative Assembly, which was based in the North Tower of the Citadel. Amanullah Khan established a state council headed by Sardar Shirah Ahmad Khan. Some members of the council were elected and some were appointed by the king. Simultaneously with the establishment of this council, the Ministry of Justice was established and Mohammad Ibrahim Khan Barakzai was appointed as the first Minister of Justice of Afghanistan [5].

Involved in extensive international relations, Amanullah Khan embarked on reform programs, seeking appropriate solutions to the country's challenges and establishing a modern government. Shah Amanullah made great use of Turkish law and the legal system of Afghanistan to modernize the legal system; Because Turkey, on the one hand, had good experiences and, on the other hand, was respected by Muslims as an Islamic country that was the center of the Islamic Caliphate for several years. However, some of Amanullah Khan's programs, which he himself called progressive, faced serious problems and opposition from the people because they were considered by scholars and clerics to be opposed to Islamic law. During the reign of Amanullah Khan, many changes were revealed in the field of governance and legislation. One of those changes was the replacement of the solar Hijri calendar with the lunar Hijri calendar (1922), and for the first time in the history of Afghanistan, private sector actions in economic affairs were welcomed; Joint stock companies were established to operate in the field of export and import. During this period, Afghanistan's political system changed from an absolute monarchy to a constitutional monarchy. During this period, Afghanistan drafted the first constitution and called the "Basic Statute of the Government against Afghanistan" in 73 first articles in 1922 in the Jalalabad Loya Jirga with 872 members and then in 1924 in the Paghman Jirga Loya Jirga. legislated. And for the first time in Afghanistan's history, imperial power was limited by political institutions such as the cabinet, the cabinet, and the courts. This is where legislation in Afghanistan began on a regular basis, with the participation of Turkish experts Jamal Pasha and Badri Beyk. With the help of French and Turkish experts, many laws were passed. About (77) regulations were adopted with a number of countries on the regulation of major governmental issues, improvement of justice, administration, economy, politics, civil, commercial, social, as well as cultural and political treaties. During this period, the laws were named because of the "regulations" that religious scholars did not agree with the name of the law. For the reasons mentioned above, as well as the haste and disregard for the state of society, the corrective actions taken by Amanullah Khan did not succeed [1].

After the fall of the government of Amanullah Amir Habibullah Kalkani, nicknamed the "Custodian of the Religion of the Messenger of God" came to power. After coming to power, the

Amir formed a parliament called the "Islamic Organizing Committee" headed by Mohammad Azam Khan Tatmadrei, and issued a decree ordering elections to establish the Islamic Disciplinary National Assembly. The council was attended by 30 people from the capital and provinces, including those with the following qualifications:

- Having literacy;
- Completion of age 30;
- Not being charged with criminal offenses [2].

It seems that during the rule of the mentioned several months, no law was enacted, but the regulations of the trust period were also put into history and were not implemented. However, Mohammad Ashraf Rasouli, in his book "Principles, Methods and Techniques of Legislation" quotes Mohammad Alam Feyzzad as saying: Instead, he had replaced Reza's military service on the basis of eight people, "but the issue of which principles were enacted during the reign of Amir Habibullah Kalkani has not been confirmed by any other source.

After the overthrow of the government of Amir Habibullah Kalkani, Nader Khan took over the affairs and adopted and implemented a new constitution called "Basic Principles of the Government against Afghanistan" in 1931 in 110 articles; But this law was not as dynamic and effective as the constitution of the Amani period. 1932 Kabul Yearbook, Legislative Activities of this Period, which include (Bills, Organization and Duties of Government Departments, Ministry of Education, Interior, Justice, Finance, Education, Trade, Independent Nature Management, Independent Post and Telegraph Administration of Provincial Departments and Municipality). Principles of trade equity, livestock products, motorcycling and ranching, salt mining operations, government treasuries, appendices to the statutes of presence and leave of officials, prohibition of entry of coins, prohibition of the right of expropriation of foreign nationals, prohibition of marriage of foreign agents and Afghan students. Is) has been noted [3].

After Nader Khan's death, Mohammad Zahir Shah, a young and inexperienced boy, relied on Erika for power in 1933 and took over. At first, he continued to rule according to the same basic principles as his father, but the global developments of the 1960s and the activation of the intellectual spectrum and the warming of the market of political activities forced the appearance of the Shah to formulate a constitution tailored to the needs of The social, cultural and political religion of this country and finally the formulation and approval of the third law.

Falling of the Monarchy Rise of the Emirate:

With the fall of Mohammad Zahir Shah's reign by the White Coup in 1973, Afghanistan entered a new phase and the country's legal system did not benefit from these developments. After the White Coup, Mohammad Daud Khan proclaimed himself President of Afghanistan, abolishing the "constitutional monarchy" system and replacing it with the "republican" system; After spending several years without a constitution, he finally succeeded in drafting the fourth constitution of Afghanistan in 1376 (136 AD) in 13 chapters and 136 articles. The product of the legislative work of this period, in addition to the 1976 constitution, is 26 laws, 12 legislative decrees, 12 regulations and 30 statutes. The drafting of the Penal Code into 523 articles and the Civil Code into 2416 articles, which was drafted during this period based on a legislative decree, and the consultants of the Arab countries cooperated with the Afghan experts in preparing and drafting it, among other valuable works in It is considered a legislative area. The government of Dawood Khan did not stay

long in the disputes with the Soviet Union, and with the coup d'état of May 28, 1978, a new chapter in the political and legal history of Afghanistan was drawn.

The rule of law and legislation after the fall of the government of Mohammad Daud and the rise to power of the people and the flags was very unusual and unfortunate. A number of laws, called proclamations, outlined the regime's basic lines on sovereignty and sovereignty, were enacted and issued by party authorities and the Revolutionary Council. At this time, the law was a toy, a tool and a tool in the hands of the rulers of the time who acted with total dictatorship against the people and their destiny. Most importantly, the religion, belief and faith of the people and their dignity and honor were not realized [8].

After the overthrow of Mohammad Daud Khan's government and the rise to power of the former Soviet-backed regime, the fifth constitution of Afghanistan, entitled "Basic Lines of Revolutionary Tasks of the Democratic Republic of Afghanistan", was established in 1980 by the Revolutionary Council of the Democratic Republic of Afghanistan under Babrak Karmal. Article 68 was provisionally adopted and implemented, which was in fact the same legal document as the constitution of Afghanistan. The basic principles of the Democratic Republic of Afghanistan, after a while, met the fate of its previous laws and were left in history.

When Dr. Najibullah came to power, he announced the policy of national reconciliation and approved the new constitution in 13 chapters and 149 articles in the Loya Jirga (1987). During his tenure, Dr. Najib passed a number of legislative documents, including the Law on Discovery, Investigation and Supervision of the Prosecutor General's Office and its implementation, the Law on Officers' Leave, the Law on Nature Protection, the Law on Crimes against Internal and External Security, the Law on the Constitutional Council, the Law on Emergency, Social Organizations, Law on Political Parties, Law on Financial Disputes and Government Cases, Law on the Establishment and Jurisdiction of the Attorney General, Law on Procedure for Proposals and Complaints, Law on the Ministry of Defense, Law on the Production of Government Documents, Law on Military Obligations, Labor Law, Law on Procedure Law Education, Press Law, Chamber of Commerce Law, Self-Defense Group Law, Higher Homeland Defense Council Law, Loya Jirga Election Law, Insurance Law, Higher Education Institutions Law, International Treaties Law, Civil Procedure Principles Law, Municipal Law, Law These include the fight against drugs, the law on state-owned enterprises, the law on combating accidents, the law on the use of water resources, the law on hunting and wildlife conservation.

With the fall of Dr. Najib's government and the coming to power of the Mojahedin (Islamic State of Afghanistan), Professor Burhanuddin Rabbani, President of the Islamic Republic of Afghanistan, ordered the formation of a 50-member commission to draft a constitution. The commission drafted the law under the title "Basic Principles of the Islamic State of Afghanistan" in 10 chapters and 114 articles. However, due to various reasons, including internal disputes between Mojahedin parties and groups, as well as the intervention of some countries, unfortunately, this constitution was not approved and signed [7].

During this period, despite the dire situation caused by the civil war in the country, limited legislative documents were worked on, the most important of which are mentioned here: the law on the division of graduates of civil educational institutions, the law on money and banking, the law Prohibition of hoarding, the Law on Audit and Control, the Law on Trading Guidelines and the Law on Mines.

During the rule of the Taliban (Islamic Emirate of Afghanistan) a number of decrees were issued and a draft constitution called the "Decree of the Islamic Emirate of Afghanistan" was drafted in (10) chapters and (106) articles but was not approved. During this period, 48 laws and other legislative documents were enacted and published, as well as a program entitled "Compliance of Laws with Islamic Sharia".

From Temporary Managing to the Islamic Republic

Following the fall of the Taliban government, the Interim Administration of Afghanistan was established under the terms of the Bonn Agreement, and the Transitional Administration of Afghanistan was established in the summer of 2002. Then, according to the decree of Hamid Karzai, President of the Islamic Transitional Government of Afghanistan and the terms of the Bonn Agreement, a commission for drafting and reviewing the constitution was appointed and finally the new constitution was prepared by the commission and in the Loya Jirga dated 22 December to 14 June 2003. It was approved in 12 chapters and 162 articles, and on February 26, 2003, it was signed by Hamid Karzai, the head of the Islamic Transitional Government of Afghanistan [11].

The most important achievement after the fall of the Taliban regime is the adoption of new laws and the emergence of the Afghan legal system, including the new constitution of this country. In addition to the dynamic text, the new constitution has other advantages that have added to its preference and distinguish it from the laws of previous periods [4]. In this law, both Islamic rules and beliefs were based on it and the government is committed to complying with the international treaties and international conventions of the Universal Declarations to which it is a party. As Articles 1, 3 and 7 of this law are evidence of this claim.

The first article describes the type of government and the form of the political regime as follows: "Afghanistan, the government of the Islamic Republic, is independent, united and indivisible."

Article 2 defines the official religion as Islam: "The religion of the Government of the Islamic Republic of Afghanistan is the sacred religion of Islam. "Followers of other religions are free to follow their religion and perform their religious rites within the limits of the law."

Article 3 states that the basis of legislation is not to contradict the rules and beliefs of Islam; "In Afghanistan, no law can be contrary to the beliefs and rules of the holy religion of Islam."

Article 7 also obliges Afghanistan to comply with international treaties, conventions and conventions and the Universal Declaration of Human Rights; "The Government of the United Nations Charter adheres to international treaties, international treaties to which Afghanistan is a party and the Universal Declaration of Human Rights. The government prevents any acts of terrorism, cultivation and trafficking of narcotics, and the production and use of intoxicants." [6]

In the new system of Afghanistan, significant work has been done in the field of legislation and more than (100) legislative documents have been approved and passed during this period, including the Law on Public Media, the Law on Domestic and Foreign Investment, the Law on Social Organizations, the Law on Communities, Strikes and Demonstrations. , Political Parties Law, Anti-Narcotics Law, New Penal Enforcement Law, Election Law, Anti-Bribery and Anti-Corruption Law, Money Laundering Law, Historical and Cultural Monuments Law, Mining Law, Juvenile Investigation Law, Procedures Law, Publication and Enforcement of legislative documents, civil higher education law, codification law, child protection law, etc. are among the most important.

Conclusion:

Examining the evolution of legislation in Afghanistan, we conclude that:

The formulation and enactment of local laws in Afghanistan has a history of about a century, and in particular the period of the Amani monarchy, which is well known. According to the name and title that is regulated in each period based on thematic laws, the history of legislation was divided into three distinct periods: 1- period-regulations 2- courses of principles 3- period of laws and legislative orders.

The charter is related to the trust period, in this period there are about 50 status systems. The original letter is related to the period of Nader Khan and the first 30 years of the Shah's rise, during which about 80 original letters were approved. But the laws and legislative decrees are related to the new era of Afghanistan, which began in 1342 and continues to this day. This course started with the publication of the official newspaper issue and continues until now.

During the nearly one century of legislative life in Afghanistan, more than (1,500) legislative documents have been published and published in various periods and types, which is not really a rich legal resource and is an important source in the existing legal history.

References;

1. Hazrat Gol Hesami (2015). "The process of the legislative system". Saeed Publications. pp 76.
2. Khalilullah Vadad Barsh.(1999) "Amir Habibullah in the fire of history". P. 125.
3. Kabul Yearbook (1933). published by the Ministry of Information and Culture of Afghanistan. pp 139
4. Sayed Ali Hosseini. (2011). "The rule of law in the Afghan legal system." Saeed Publications. ۱۳۹۰ ش. P.151.
5. Aziz al-Din Fufalzai.(1990.) "Afghanistan Judiciary". Publication of Government Printing House.
6. Constitution of Afghanistan. (2004) official gazette publication, serial number 818. Articles 1, 2, 3, 7.
7. Qutb al-Arifin Siraj. "Principles of Law with an Approach to Islamic Law and Afghan Law". Saeed Publications. P.120.
8. Mohammad Ashraf Rasouli (2016). "Principles, methods and techniques of legislation". Saeed Publications. Pp. 76,77, 86.
9. Mohammad Ashraf Rasouli. (2016) "Review of the Constitution of Afghanistan". Saeed Publications.. P 83.
10. Mohammad Alam Feyzzad.(2010). "Legislation in Afghan society". Publication of Afghanistan Tomorrow Seminar. P 83.
11. Nasrullah Stanekzai (2016). "Principles of Law". Future Publications. P. 178.