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Afghanistan's governmental structure in the post-Bonn era

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Abstract

After the Taliban's regime, in the Bonn conference (2001) which was conducted on the Re-establishment of permanent governmental institutions of Afghanistan as the post-conflict country, the discourses of Afghanistan's governmental system in the next new constitution started. Till 2004 the country governed by the interim and transitional administrations based on power-sharing under the 1964 constitution in a centralized and presidential system.

So, this study aimed to assess that in the new 2004 constitution why a centralized political system is chosen. And the objectives of this study are to determine the essence of adaptation of the centralized political system since 2004 and some de-centralized institutions in the centralized constitutional set up. The methodology of this study is the content analysis based on secondary data. Regarding to the research findings in the 2004's constitution, the reasons behind adopting centralized political system were the domination of the Pashtuns elites and their influence on the future political agenda, the prevention from the stepping back of Afghanistan to the domestic wars due to the warlord's autonomous military power and the risk of secession of the country. And the existence of some decentralized institutions in the 2004 centralized constitution is due to the mountainous geography that limits the central control over regions, and the convincing local power holders to prevent from their political insurgency in the regions by giving some control over the local issues.

Keywords: Afghanistan, post-Bonn, centralized, decentralized, concentrated-centralization

Introduction

Afghanistan a strategic geography in the Asia experienced many political systems such as "monarchy, republic, theocracy, and communist regime". (wikipedian, p20) from 1919 when Afghanistan got independence to 1994 the country's political system was a monarchy. During this period three kings governed the country under three different constitutions. that their constitutions called the monarchy constitutions.

When Daud khan got the power by a military coup d'état, (BBC, 2009) [3] he announced the republic system in Afghanistan for the first time and adopted a new republican constitution in 1973 (Country, D, 2008, p3) [6]. From 1973 the Daud khan government till 1995 Afghanistan's regime was based on the republic system. (Shefaye, 2014) [18].

In 1996 when the Taliban took place their political system was secret with no official document and policy based on the theocracy system. (Counter extremist project, p4) after the collapse of the Taliban in 2001 (TAF, 2017, p12) Afghanistan stepped toward democratization and got a new constitution in 2004. This constitution adopted a unitary centralized political system under the Islamic Republic of Afghanistan.

On one hand, the centralized system refers to the political system that all of the decision-making power refers to a single authority or a small group of people. This means this system refers to the concentration of power in the center without consideration of regional or local authorities. The regional and local authorities are dependent on the center orders. Even the recruitment of these local and regional officials depends on the central government. Or simply we can say it's a top-down controlling system.

On the other hand, the decentralization system refers to the reduction of the central government's power and empowering the regional and local authorities. It guarantees people to elect their local authorities through certain laws and regulations. This system has found as a solution for the problem of inefficiency in the centralized government and to achieve the goals of democracy like legitimacy, accountability, and responsiveness of the governments. (Mueller, 1997, p74) [12] As a result, the reallocation of power to the local authorities as the

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basis of the decentralized government can lead to local efficiency, equity and a more democratic country with a high level of development. So, this essay seeks answer to the questions that Why did Afghanistan adopt the centralized political system since 2004? And why would a centralized constitutional set up have de-centralized institutions? to answer these questions, this essay has been structured into 5 sections. The first section focuses on Bonn conference and the discourse of Afghanistan's political system, the second focuses on Establishment of the transitional government (2001-2003), the third focuses on Constitution Loya jirga (2003); consensus on the political system, fourth, focuses on Afghanistan's political system according to the 2004 constitution, fifth, the decentralized elements of 2004 constitution and after all, it ends with the conclusion of the overall topic, the recommendations, and the references.

Bonn conference, the interim administration, and Afghanistan's political system

After the fall of Taliban government, the UN envoy to Afghanistan Mr. Lakhdar Brahimi previously served as the Secretary-General's Special Envoy for Afghanistan from July 1997 until October 1999 and the US envoy to the Afghan opposition Mr. James Dobbins gathered Afghan leaders from four groups which were the Northern Alliance, the Rome group which had supporters of the exiled king Mohammad Zahir Shah, the Peshawar group which included the Afghan former leaders in Pakistan and the opposition groups like Iran or the Cyprus group to create an agreement on the Afghanistan's political structure in the hotel of Petersburg in Bonn of Germany. (Fields, 2011, pp. 8)

In this conference, Brahimi focused to come up with a power-sharing political structure by deliberation between Afghan ethnics. But Dobbins according to his experience of negotiations in the Bosnia and Kosovo conflicts offered a different solution to the reconstruction of Afghanistan's political system. He focused to include foreign mediators such as the neighboring countries, the US and Russia along with the Afghan leaders to reach an agreement on the country's political structure. Finally, Dobbins's vision dominated, and the decision was taken according to his perspective because he believed that the bordering countries, the US and Russia can influence on the afghans and force them in reaching an agreement. (ibid, 2011p8) So he got the duty to meet with the Indian, Iranian, Russian, Pakistani military and Turk leaders along with the leadership of all four Afghan delegations. As a result, after negotiations, he came up with the three main achievements. The power-sharing, achieving consensus on a Pashtun leader and gaining international support. (Fields, 2011, p14-17)

During the conference, the Brahimi preferred a power-sharing political design as a solution to Afghanistan as a post-conflict country. But it refused by the Iranians diplomats and urged a democratic election which ultimately accepted and included the conference document. Finally, discussions led to an agreement named "Bonn agreement" which offers a stable country and a representative government for Afghans. (Fields, 2011, p5)

According to this agreement, all the groups agreed on these road maps. an interim authority for 6 months by consideration of power-sharing based on ethnics, establishing an emergency Loya jirga to elect the transitional

government for 18 months and constitutional Loya jirga to structure the political system of Afghanistan. (Fields, 2011, p5)

As a result, based on the consensus on the interim administration, this administration included 30 members based on the power-sharing system from different ethnicities and groups of afghans. The interim administration governed the country for six months until the creation of the transitional government.

Emergency Loya jirga and the establishment of the transitional government (2001-2003)

During the interim Authority in December 2001 and before the Constitution Loya jirga (Fields, 2011, p13) [8] according to the Bonn agreement 4th provision "An Emergency Loya Jirga shall be convened within six months of the establishment of the Interim Authority... The Emergency Loya Jirga shall decide on a Transitional Authority, including a broad-based transitional administration, to lead Afghanistan until a fully representative government can be elected through free and fair elections to be held no later than two years from the date of the convening of the Emergency Loya Jirga." (CFC, p6)

So, an emergency Loya jirga commission within 21 members was created in January of the 2002. This jirga which was made of 1501 delegates included the intellectuals, religious minorities, traders and including 160 women, which happened in the Kabul. (Bijlert, 2012, p14) This jirga as the transitional process was to select the chairman of the transitional administration and building the political structure of the transitional government through power-sharing, national negotiations, and elections. (Papagianni, 2005, p749)

Finally, in this jirga, Hamid Karzai who is the leader of the Popalzai tribe of Durani Pashtun selected as the chairman. (Bijlert, 2012, p14) Hamid Karzai got the chairman position because of two reasons. First, the US envoy Zalmay Khalilzad pressurized on the former Afghan king Mohammed Zahir Shah to withdraw his nomination in favor of Karzai. Second, the majority of the delegations voted based on their ethnic's preferences. (Afsah, Gubr, 2005, p423)

The northern alliance, however, was domination of Tajik ethnic but because of the large population of Pashtuns in the country couldn't get the chairman as well as prime minister position in the transitional government. But they got the veto right in the parliament as the tool to control the president's appointments. (CFR, 2019)

After the election of the chairman, according to the Bonn agreement the transitional government governed by a centralized and unitary political system under the 1964 constitution. According to this unitary system and Bonn agreement the executive and the legislative powers in a cabinet headed by the president. The goals of the transitional government were to create a democratic political structure including all the ethnics and representative government based on a constitution to end the Afghanistan long conflict and creating reconciliation among people. (Papagianni, 2005, p751)

Constitution Loya jirga (2003); consensus on the political system

After the ELJ. The next step toward the reconstructing of Afghanistan was creating the constitutional Loya jirga.

According to the Bonn agreement “the Constitutional Loya Jirga shall be convened within eighteen months of the establishment of the Transitional Authority, to adopt a new constitution for Afghanistan”. Therefore, first, a nine-member drafting commission held in the 5th of October 2002 which drafted a constitution. Then it was sent to the 35 members of the review commission to review the drafted constitution. Finally, the constitution Loya jirga established in December of 2003 and adopted the new constitution on the 4th of January.

This constitution unlike other post-war countries “such as Bosnia-Herzegovina” adopted in a very modern legal framework such as including rule of law. (Afsah, Gubr, 2005, p425) but the process wasn’t democratic because the commission was dominated by the Afghan warlords in the absence of the democratic activists. (ICG, 2003, p21)

Overall, the constitution Loya jirga in case of the political system focused more on the issues of the choice between a purely presidential or a mixed system with a president and a prime minister relying on a parliament- approved a cabinet. but the adaptation process wasn’t much democratic in that sense, because the public participation wasn’t considered. In the process of consultation from 450,000 distributed questionnaire more than 15000 citizens participated. The majority of people requested the parliamentary system despite these people’s requests this system rejected. (rasoli, 2012, p7) even that, it was not decided in the constitutional Loya jirga. Only the leaders decided on the political system among themselves. (Papagianni, 2005, p754-55)

Although, in this Loya jirga, the federal system has been debated but it was rejected because some of the delegates believed that it might only solve some of the problems created by the warlords, Some others argued there are not sufficient prerequisites for a successful federal system, Some argued it may cause the disintegration of the country and it may cause internal war because the illiteracy level is high, the economy is very low and the problem of who gets and what will raise. The lands and natural resources distribution cross the country look hard, the fears of neighboring countries' intervention because they support special parties in the country will cause to the country’s secession. (Afsah, Gubr, 2005, 430-431)

As the final decision in CLJ according to the country’s requirements, the final proposal has requested a parliamentary system with a high powerful prime minister within the independent constitution court apart from the high court. The constitution commission defended from its decisions many times but the transitional chairman with rendering reasons that it may cause to conflict between the president and prime minister and led to the disarrangement in the future deleted both the parliamentary system and the constitutional court. (rasoli, 2012, p6)

Finally, the Afghanistan constitution adopted in 162 articles and decreed by the Hamid Karzai the transitional government chairman on the 26 January 2004. (Afsah, Gubr, 2005, p425). In this constitution, the political system determined as a highly centralized administration which is a presidential system. (Afsah, Gubr, 2005, p430-431) with a directly elected president and two-chamber legislation. (Britannica, 2019)

So, in sitting up the centralized political system, the role of the Pashtuns elites as the dominant ethnicity is not deniable. Because under a centralized government even if people

gather to act nationally, still they can’t organize the strong groups to influence the political agenda. So, they believed that this system gives the chance to Pashtuns to influence the political agenda according to their political interest in the future. (James, p4)

On the other hand, in that situation Afghanistan needed the centralized government. because warlords politicized the ethnicities and the fragile ethnicity-based identity could increase the chance of domestic war and social cleavages. (Collier, p28) for instance, the fight in April 2003 during transitional administration between *Jamiat* and *Junbish* commanders in one of the localities in the north of Afghanistan shows the incompatibility of these ethnicity-based parties. (ICG, 2002, p6) ^[11]

Also, under the decentralized system, the secession of the country was possible because on that time all the ethnicity-based parties had military power and all again could be functioned as the “mini-state” government in the parts of Afghanistan with the independent monetary power and independent policies from each other such as specific currency. (Thier, 2010, p10)

The Afghanistan governmental system according to the 2004 constitution

According to the first provision of the 2004 constitution, the political system of the country defined a unitary country. Means Afghanistan is a “unified and centralized state”. (Ayobi, 2018, p12) and according to article 60 “The President shall be the head of state of the Islamic Republic of Afghanistan, executing his authorities in the executive, legislative and judiciary fields”. So, the political system is a presidential system with a highly centralized administration.

For justifying of this system, the articles 75-76 of this constitution which refer to the responsibilities of the president like ratifying of the constitution and legislative decrees, finalizing of court decisions, the dependency of security and public order, budget making and planning the development projects shows how deeply and highly centralized is the political system. (Ayobi, 2018, p18)

On the other hand, there are some parliamentary signs as well. For instance, the appointment of the ministers, the members of high court depend on the confirmation of the parliament. (rasoli, 2013, p216-217) although, in the case of an administrative system, this constitution pointed to some concentrated-decentralized elements. For instance the article 137 of this constitution explains the administrative system as: “The government, in preserving the principles of centralism, shall delegate necessary authorities, in accordance with the law, to local administrations in order to accelerate and improve economic, social as well as cultural matters, and foster peoples’ participation in developing national life.” (2004 constitution, article137)

So according to this article, the organizations of public administration exist in the two levels. The central and local administrations. Because the statement “preserving the principles of the centralism” along with referring to the local administrations shows the situation of the “concentrated decentralized” not decentralized because it shows the clear dependency of the local to the center. It creates the situation of the flow of politics to the administrative processes. (Ayobi, 2018, p13)

The decentralized institutions of Afghanistan's governmental system

As defined in the above, this constitution adopted a "concentrated decentralized" administrative system. so, the decentralized institutions at the provincial level are the provincial council, district councils, village councils, municipality and the representative's administration of ministries. The local district council, village councils, city councils, provincial council, and the mayors should be elected by the people. (Ayobi, 2018, p24)

In 2007 the Independent Directorate of Local Governance (IDLG) established. This organ created to implement article 137 of the constitutions to coordinate and support the local governance for better provision of the public goods and services at the local level in 34 provinces, 374 formal and informal districts, and 153 municipalities. (IDLG, 2019)

But in reality, this organ is not really independent and still, the local authority is indirectly depending on the office of president decisions. Because it is being controlled by the center. For example, the appointment of governors at the provincial and district level refers to the president. (Sharma, p8), the mayors select by the IDLG with the consultation of the governor and assigned by the President. (Habib, 2013, p10) even in the local administrations, all the staff is being recruited by the ministries. (Habib, 2013, p6) so, the question is why would a centralized constitutional set up have de-centralized institutions?

The existence of the decentralized institutions in the centralized constitution of Afghanistan can be justified through the geographic structure and tradition believes of localities. The decentralized institutions are alternatives to prevent form the political insurgency of the local and the regional elites. Because according to the existed tradition of Afghanistan the local elites have more influence on their locality. So, to protect from the local political insurgency this set up gives the local power holders some level of the local autonomy that can have some control over the local issues. On the other hand, according to the mountainous geography of Afghanistan, it's not possible to provide every service by the center and have strong control over all the disasters and problems. So, the decentralized institutions help to reduce the level of administrative inefficiency at the local level. (Thier, 2010, p10)

But in practice, unfortunately, this dual mechanism, the dependency of the local to the center (Ayobi, 2018, p18) instead of booming the development as mentioned in article 137 created some problems like the economic dependency, abuse of power, poor governance and slowing the administrative process. (Sawe, 2019) ^[16] The indirect concentration of the power in the center, especially in the hand of the president didn't increase the people's participation through these institutions. (Sharma, 2011, 8) ^[17].

Conclusion

In the post-Bonn era, the discourses on the governmental system of Afghanistan as the post-conflict country started. Till 2004 the country governed by the interim and transitional administrations based on power-sharing. In both administrations, this country governed under the 1964 constitution in a centralized and presidential system.

In the 2004 constitution's a centralized political system with some decentralized institutions adopted. The system is more "concentrated-centralization" then centralized. The reasons

behind sitting up the centralized political system are that of domination of the Pashtuns elites due to influencing the political agenda in the future, the prevention from the stepping back of Afghanistan to the domestic wars due to the warlord's autonomous military power and the secession of the country. But due to the mountainous geography that limits the central control over regions, and the convincing local power holders to prevent from their political insurgency in the regions by giving some control over the local issues decentralized institutions in the centralized constitution of Afghanistan adopted.

Recommendations

Today according to the changes happened, this system couldn't fulfill the citizen's preferences, the economic dependency and didn't solve the ethnolinguistic problems of Afghanistan so I strongly request these recommendations.

1. To solve the political, economic and social problems of the country, the political system should change from a centralized to a completely decentralized political system. (tie bout principle)
2. Based on its ethnic diversity society, the federation would be the best option to solve the long ethnic conflict and domestic war in Afghanistan.

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