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The First Phase of Constitutionalism in Afghanistan

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Abstract

Constitutionalism first started in the West, especially in the UK (Great Charter), the United States of America, and then in France. The first constitution in the world was adopted in the United States in 1789 and then in France in 1791, later on, the process expanded to the rest of Europe and later to Asia and Africa. While Afghanistan tried to exercise the phenomena in the second half of the 19th century, British aggression stopped the process. In 1903 some teachers of Habibiya High School established a constitutional movement. They started a struggle with the government to adopt a constitution for the country, unfortunately, the movement was dismissed when its key members were killed by Amir Habibullah in 1906.

This paper talks about the history and meaning of constitutionalism, the constitutional movement, and its various groups, goals, and some internal & external reasons that motivated and accelerated the movement in Afghanistan. The findings of this article show that, despite of severe situation in the country, various internal and external obstacles in the way of constitutional movement, and a lot of sacrifices, the constitutional movement's members, finally changed the situation and the tree of constitutionalism gave fruit and Afghanistan got independence and exercised constitution for the first time.

Keywords: Constitutionalism, Afghanistan, First phase

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Introduction

The constitutionalism and constitutional movements started along with opposition between government and church and capitalist groups in the West since the 13th century. Great Charter, Parliament, Oxford laws, Golden legislative decree, and diet are the introductions to contemporary Western democracy. The declaration of parliament rights in the 17th century made the core of England's constitutionalism. France's revolution in the late 18th century paved the way for human rights declaration. In the 19th and 20th centuries, constitutionalism was promoted in eastern countries. Some reforms were brought in Turkey by Rashid Pasha and Medhat Pasha, in Iran by Mirza Taqikhan, the second Sultan Abdulhamid and Muzafarudin Khan Qajar, Mohammad Ali Khadew and Malik Fawad brought reforms in Egypt.¹ Later Syria and Iraq also saw some reforms.

In Afghanistan, some reforms started by Amir Shiralikhan motivated by Sayed Jamalodin Afghani during (1862 – 1878), but the reforms were stopped till the beginning of the 20th century, because of the British invasion. At the beginning of the 20th century, the presence of the British, the extension of the relationship between Afghanistan and British India, western media, and the expression of newspapers in Afghanistan especially in Kabul, made Afghans educated to restore constitutional movement in the country.

During Habibulla's reign, the constitutionalists were divided into three groups: the first group consisted of government employees who had carefully encouraged the monarch to bring about some reforms in the government system from the top to the bottom. The second group consisted of educated people especially, Habibya high school teachers. This group, on the one hand, was instigating the people to pressure monarchs and governments to distribute the power. On the other hand, they were encouraging monarchs and high-rank officials, through their writings in Serajulakhbar quarterly magazine, to follow Western developed countries and nations to bring some reforms in the government system. The third group of constitutionalists consisted of individual educated people, who had personal relationships and these people also worked for reforms and constitutionalism.

Every nation every country tries to limit and legitimate the power and authority of the rollers, through laws, especially by constitution. This phenomenon successfully has been exercised by various nations in the world since 1791. Afghanistan also pursued the way many times but some questions are here to be

answered like: What were the reasons for constitutionalism in Afghanistan? Who triggered the struggle and what were its consequences?

The main objectives of the article are, to introduce constitutionalism in Afghanistan and its history, evaluate the achievements and consequences of sacrifices in the way of constitutionalism, and the progress of the process in the country.

This article has been written based on historical and analytical methods of research, also books, articles, and authoritative websites have been used as sources.

This article includes the meaning of constitutionalism, theoretical and historical analysis of the constitutionalism and Constitutional Movement in Afghanistan, goals of the constitutional movement in Afghanistan evaluation and influence of the world and region's developments on Afghanistan's constitutionalism and constitutional movement, struggle, and finally brief conclusion and suggestions.

Meaning of constitutionalism

Constitutionalism is the idea, often associated with the political theories of John Locke and the founders of the American Republic (James Madison & Thomas Jefferson), that government can and should be legally limited in its powers, and that its authority or legitimacy depends on it observing these limitations. In some minimal sense of the term, a constitution consists of a set of norms (rules, principles, or values) creating, structuring, and possibly defining the limits of, government power or authority. While in a richer sense of the term constitutionalism is the idea that government can/should be limited in its powers and that its authority depends on it observing these limitations. ²Or "Constitutionalism is a political philosophy based on the idea that government authority is derived from the people and should be limited by a constitution that clearly expresses what the government can and can't do". ³

In other words, Constitutionalism is "a complex of ideas, attitudes, and patterns of behavior elaborating the principle that the authority of government derives from and is limited by a body of fundamental law". ⁴

Constitutionalism means a complex of ideas and attitudes that have derived from the hopes and desires of the people of a country and the way to limit the power of rulers and legitimate the authority of government. Or constitutionalism is the way to distribute the political power, vertically and horizontally to confirm and grant, the pivotal role of the people in the governance. Constitutionalism is the

way, to bind the power of rulers and pillars of government and the realm of activities of individuals, to the principles of the Constitution.

Constitutionalism in Afghanistan

Constitutionalism in Afghanistan is divided into two phases; the first constitutionalism and the second constitutionalism. First constitutionalism was rooted in the Anjuman Serajulakhbar Afghanistan⁵ (Serajulakhbar association) during Habibullah's government.

In the years 1903- 1321, two Madrasas (religious schools) were founded in Kabul by the names of "Darshahe some Dini and Darulolome Habibya" where the best religious scholars were employed to teach students. The teachers of the madrasas came together and suggested to the king Habibullah to establish an Assembly of scholars to publish a biweekly newspaper by the name of Serajulakhbar, to inform the people about the developments over the world.⁶

The association (Anjuman Serajulakhbar) was founded officially in 1323 (1906) with the membership of, Mawlawi Abdulrauf Khaki as chief, Mawlawi Mohammad Sarwar Wasef as senior teacher of Madrasae Shahi and image Hozor (patron saint) as a clerk, Munshi Hafiz Haider Ali Khan as editor and Urdu translator, Haji Bashi Ghulam Naqshbandkhan as Turkish translator, deputy Urdu translators Abdurahman Big and Abduraheem Big, scribes Mirza Ghulam Qaderkhan and Mirza Mohammad Ishaq Khan, and Proofreader Qari Neik Mohammad. The first issue of Serajulakhbar was published eight months later after the foundation of the newspaper. As the spirit of this publication was against British colonialism, they pressured King Habibullah to close the newspaper as soon as possible.⁷

The first constitutional movement was founded by Mawlawi Mohammad Sarwar Khan. He brought the constitutionalists together in Habibya school in Kabul and wrote down a petition to King Habibullah which partly says: "In some countries, people impel the king by force to make a constitution and adopt administrative system according to desire of the people, while in some countries educated and far-sighted king based on goodwill, do it by himself. The king is illuminate and progressive because He paid attention to the development of the country like the foundation of Habibya school, the emission of Serajulakhbar, the printing of books, the import of modern printing machines, construction of roads and buildings. So, it is hopeful to make a constitution and build up a legitimate authority in the country to prevent arbitrary and contrary rules to Islamic laws.

It will help the people to live a prosperous life under the rule of law and constitutional system”⁸. The petition had been submitted to King Habibullah in Jalalabad city by Professor Gulam Mahammad Maimanagi.

Amir Habibullah killed four members of the constitutional movement including Lal Mohammad Ghulam Bacha, Jowhar Shah Ghulam Bacha, Mohammad Usmankhan Parwani, and Mohammad Ayubkhan Kandahari. It is said that King Habibullah called them and asked: why have you ignored my kindness and facilities that I prepared for you? Jowhar Shah Ghourbandi and his friend Lal Mohammad Ghulam Bacha told him about the activities and atrocities of the government and the restiveness of the people from the government. Then the king ordered to kill them so they were killed by pistol.⁹

Mawlawi Sarwar Wasef, with his brother Sadullah Khan and uncle Abdurrahman Khan, were arrested by the government and after two days all of them were fired in Shir Poor Hill of Kabul city. When Mawlawi Wasef, was firing he said: “While I believe in almighty Allah and Angels, I killed by Amir Habibullah”.¹⁰ Also, he read a famous couplet composed by Sarwar Waṣif just before his execution: Tark-e Jan o tark-e malo tark-e sar; Dar rah-e mashrṭa awwal manzel ast “The sacrifice of life, the sacrifice of property, and the sacrifice of the head; all these are the first stage on the way to constitutionalism.”¹¹

Goals of the first constitutional movement

The constitutional movement had ten main goals and those who wanted to join the movement were required to accept them, those goals are as follows:

- 1- Obey the tenets of Islam and the sacredness of the Quran and accept all its rules;
- 2- Continuous efforts to achieve national and constitutional rights by the representatives of the nation and provide national sovereignty and the rule of law;
- 3- Trying to instill good sociability and public affairs to the people and blame bad habits;
- 4- Reconciliation and understanding among all peoples and tribes of Afghanistan and consolidation of national unity;
- 5- Trying to form the nation peacefully and by reconciliation, not by using weapons and force;

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- 6- The generalization of schools and education and press to awaken the people;
 - 7- Establishment of the National Assembly through freely elected representatives by the people;
 - 8- Obtaining political independence and freedom in Afghanistan and expansion of political and economic relations with the outside world;
 - 9- Providing principles of equality and social justice and
 - 10- Development of new foundations of civilization such as industry, profession, and construction of highways, development of cities, and provision of water and electricity.¹²

The constitutional movement's leading members believed in peaceful and non-violent struggle, so they tried to continue their struggle peacefully and encouraged the king to accept the generalization of education and bring about government reforms. The movement preferred and tried peacefully to take obstacles away and had no casualties because in the very beginning, the members of the constitutional movement were so less and it was not advised or impolitic to get risk.

Even though the internal condition made the people instigate and influence King Habibullah to adopt a constitutional government and a legitimate authority in the country, there were some external factors also, that instigated the people especially educated to accelerate the struggle, some of which were mentioned below.

External Motivators

Along with many internal factors that paved the way for the constitutional movement in Afghanistan, some external factors also motivated and accelerated the reformists' struggles and activities, which will be discussed below. **1**

Liberation and Jehadi movement of India

Since 1763, there was a very important religious thought reform movement in the center of the Mongol empire in Delhi, headed by the then-religious scholar Shah Waliullah Dehlawi and followed by his descendants. The main goals of the movement were to continue the holy war (Jihad) against the British presence in India to sustain the Islamic role in the country and bring social and economic reform to the government. In 1803, British governor, Lord Laik, occupied Delhi and Sikhs established their government in Punjab, so Mawlawi Ismael Dehlawi grandchildren of Shah Waliullah Dehlawi with Said Ahmad Brillo and a convoy of mujahedin along the way of Sindh and Kandahar arrived to Kabul and unsuccessfully tried to establish an Islamic government in Peshawar. The

descendants of Mawlawi Ismael Dehlawi followed the way and established (Almujahedin) newspaper newspaper to instigate anti-British brace and feelings. They had close relationships and ties with Kabul intellectuals and constitutional movements.¹³

At the beginning of the 20th century, the national Congress and Khilafat movement provoke Hindus and Muslims to demonstrate the independence of India from British colonialism. For this purpose, they needed to make and maintain close ties with the Kabul government and get their support. Kabul government and the people of Afghanistan did so and they helped even India's exile government to be farmed in Kabul.¹⁴

In 1857 India's Muslims operated a revolution to get independence from British colonial power. Even though this insurgency struggle was conquered and suppressed by British forces many Muslim pioneers of the movement like Mawlana Abdulkalam Azad, Mawlana Muhammad Ali Jawhar, Hakim Ajmal Khan, Nawab Weqarulumk, Dr Mukhtar Ahmad Ansari, Mawlana Taj Mahmood Amroty, Abdullah Haroon, etc, Continued their struggle under the leadership of Shaikhulhend Mawlana Mahmoodulhasan, both in India and Afghanistan. ¹⁵This movement also motivated Afghanistan's constitutional movement and accelerated its activities.

In 1915, Mawlana Abdullah, a senior student of Shaikhulhend, arrived in Kabul and organized Indian students, who had already come to Kabul. He met with Sardar Enayatullah Khan and Sardar Nasrullah Khan¹⁶ to get their support and assistance. In 1916, Mawlana Mansoor Ansary and Mawlawi Abdurahim also joined them to establish the Indian party but they were not able to contact with people of Kabul. The reason was that they were under the severe surveillance of British intelligence, so they chose Turkish doctor Munirbieg's room in Kabul Civilian Hospital to meet people and government officials. ¹⁷Mawlawi Barakatullah son of Munshi Qudratullah Bhopal was a Professor and had been working in Tokyo, Japan; he wrote articles for "Serajulakhbar" newspaper in Kabul and was famous as an Indian independence activist. He joined Indian independence forces and traveled to Kabul in January 1916, then to Moscow in 1919 with an Afghan commission to instigate the people and governments against British presence and rule in the region. He also wrote a book about similarities

between Islamic Baitulmal (Islamic government treasury) and those of Marxist-socialism as both are based on public property. (Habibi, PP: 98-102)

1- Turkish and German then governments

Turkey and Germany as two serious rivals of British presence in Afghanistan and in the region were another important factor that were motivating and accelerating anti-British-colonial forces to pressurize and involve Britain in multiple problems. Therefore they sent a commission to Afghanistan under the leadership of Van Henting to instigate Afghanistan's government and people against British role and supremacy in the region. The independence of Afghanistan was one of the core objectives of the constitutional movement.¹⁸

Yose Bashi Kazembi, a Turkish brigadier and member of the Turk-German joint commission, stayed in Kabul till 1919 and then he went to Moscow. Kazembi supported the "Vice of Poor's Newspaper" and later became governor of Ishqabad (now the capital of Turkmenistan). In 1919, he formed the "Young Bukhara Assembly" and wrote to Herat's governor in Afghanistan and assured him about the intervention of Pan-Islamic forces in Iran against British forces. He also assured him that shortly Russia would support King Amanullah Khan with airplanes, tanks, and military accouterment and they are friends of Muslims.¹⁹

Unfortunately, despite many factors and sacrifices that accelerated the process, constitutionalism did not give the result that the Afghanistan people wanted. The constitutional movement was dismissed and its key members were killed by the monarch, as Mehrine says "Amir Habibullah ordered to fire most of the activists, those who spoke with the king through a petition, not with a weapon²⁰. Who wanted to expel British troops from Afghanistan and to limit and legitimate power of the king by constitution"?¹

The members of the constitutional movement suffered many hardships and hardly tried to take away obstacles in their way and gave many sacrifices which continued even till Habibulla's descendants Amanullah and Mohammad Nader Shah's statesmanship. According to Mehrine "One of them was Abdurahman Lodin, a permanent writer of Serajulakhbar and an active member of the constitutional movement, who mostly criticized the king's policies openly. Although he was a senior official in Amanullah's power and then a mayor of Kabul city, he was killed by Nader Shah without any particular charge".²

²⁰ Firing is a kind of punishment which thongs a person on the mouth of heavy weapon and fired him to be sliced.

The first phase of constitutionalism stopped after the killing of key figures of the movement and the confiscation of (the Serajulakhbare Afghania) newspaper, through the order of King Habibullah, in 1911 but it did not mean that the spirit of constitutionalism remained silent. Even though there were many obstacles in the way of constitutional movement, it still pursued its activities and paved the way for the formation of a government that would function under the rule of law and limit the power of the king, because there were some motivators to instigate and encourage the movement to follow the way and attain victory.

Though the key figures of the movement were killed by Habibullah with British support, the remaining members of the constitutional movement temporarily kept silent. After a short time of silence, the movement activated once again took away all the existent obstacles, and opened gateways of prosperity to its members. Even the key members of the royal family supported the movement and became its members. This consequence strengthened the spirit of constitutionalism in the country and paved the way for a new wave of constitutionalism. It resulted in killing the of King Habibullah, who wanted to throw away the tree of constitutionalism and shut up the voice of freedom and independence. Interestingly, some people believed that the king had been killed by his son Amanullah.

Finally, the key figures of the royal family turned against Amir; after several unsuccessful assassination attempts, he was finally murdered on a hunting expedition in Laghman province in February 1919.³ After Amir Habibulla's assassination, Prince Amanullah attained power. He supported the movement and paved the way for the adoption of the first constitution in the country.

Conclusion

Constitutionalism began as a process of changing the form and nature of the government and governance, in the West from the 16th century. The Great Charter of Britain and the constitutions of the United States of America and France are examples. The process slowly expanded the east also. Some educated people in Afghanistan also wanted to try and experience the phenomena in their country. For this purpose, the constitutional movement farmed and started struggle but actually, it was not so easy. They faced many obstacles and suffered so many sacrifices in the way of constitutionalism.

Despite the existence of many obstacles against the constitutional movement from the dictator government and British colonialism, the movement followed the way to success because to two main reasons. First, serious resistance and anti-tyranny spirit in the movement, second, external factors as mentioned above. Though the key figures of the movement were killed by Habibullah with British

support, the remaining members of the constitutional movement temporarily kept silent. After a short time, of silence, the movement activated once again and took away all the existent obstacles and opened gateways of prosperity to its members. Even the key members of the royal family supported the movement and became its members. The joining of key figures of the royal family strengthened the spirit of constitutionalism in the country and paved the way for a new wave of constitutionalism. According to the members of the movement, the most important obstacle against their desire was the monarch so it resulted in killing the of King Habibullah, who wanted to throw away the tree of constitutionalism and shut up the voice of freedom and independence. Interestingly, some people believed that the king had been killed by his son Amanullah.

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