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Abstract

Post-9/11 incident the Taliban rule ended in Afghanistan and a democratic government was established through the Bonn conference in December 2001. The conference was held with the active intervention of the US and the UN, which distributed the power amongst different ethnic groups of the country, followed by the promulgation of a democratic constitution in 2004 by the "Loya Jirga" in Kabul. The new constitution proclaimed Afghanistan as a sovereign, Islamic Republic where the state's legitimacy would be achieved through a universal adult franchise, and the state would ensure the fundamental rights of the citizens. But, despite all these efforts, democracy could not consolidate in the country, consequently, the Taliban returned to power after 20 years of war. Does the paper explain what led to the failure of democracy in Afghanistan? And what type of government can best suit Afghan society? The paper finds out that establishing western style strong centralized democracy and power sharing on an ethnic basis in the Bonn conference led to the marginalization of religious and tribal authorities, who used to enjoy leverage in provinces. Also, the centralization of power resulted in corrupting government officials, which led to a widening gap between the state and society, and weakened the government institutions. As a result, the Taliban after a peace agreement with US on 29th February 2020, captured power in Kabul on 15th August 2021. The paper finds out that formulating a decentralized authority, with a mixed type of sovereignty, and aligning democratic principles with religious and tribal authority is the most feasible form of government for Afghanistan. According to Islamic scholars, there is compatibility between Islam and democracy, because Islam believes in consultation and Bay'a in state formation, and these tenets of Islam are similar to the core values of democracy namely representation, freedom of expression and election.

Keywords: *Islam, Democracy, Jirga, Consultation, Bay'a, Bonn conference, corruption, Human Rights violation*

1. Democracy in Afghanistan: Historical Background

The term Democracy has been widely used in modern nation-states after the enlightenment period, especially after the 1850s in European countries, but it has more traditional and historical roots in Greek city-states, where people directly participated in the decision-making process affecting their lives.¹ Democracy has been widely

¹ Nevers, Jeppe. "A history of democracy beyond national narratives", *Geschichte und Gesellschaft* 44, no. 3 (2018): 416-429.

described as a form of political aggregation in which the general control and direction of the country are determined by the bulk of the community in accordance with the understandings and procedures providing for popular participation and consent.² American President Abraham Lincoln defines Democracy as the “government of the people, by the people, for the people.” However, this definition does not imply a comprehensive definition of the term, hence; some scholars only define democracy as a form of a political system that conducts regular, transparent elections based on universal adult franchises, and such democracies are known as electoral democracies. While, on the other hand, some political scientists believe that only meeting the minimum requirements of conducting elections, does not declare a country a democratic one, and they insist on ensuring universal human rights, freedom of association, freedom of thought, and expression, religious and cultural freedoms as the most important pre-requisites for democracy.³ Looking at the comprehensive definition of democracy, the paper will analyze the democratic transition in Afghanistan post-Bonn conference.

The foundation of modern Afghanistan was laid down through democratic principles, as democracy is rooted in the culture of Afghan society, where most of the tribal issues were discussed by tribal leaders and decisions were taken after consultations. A great example of this argument is seen in the election of Ahmad Shah Durrani the architect-in-chief of modern Afghanistan through a Jirga of nine Abdali clans after nine days of consultations and deliberation in the Sher Surkh shrine in 1747. And a Darvesh (a holy man) placed two sheaves of wheat in the turban of Ahmad Shah Abdali as an act of coronation, and all the other nine leaders pledged their allegiance to him. This shows the two basic Islamic and democratic principles Shura and Bay’s, which at least ensured electoral democracy in Afghanistan.⁴ Although, the foundation of the state in Afghanistan was based on democratic principles. However, with the demise of Ahmad Shah Abdali, the country changed into a monarchy, which lasted for almost 226 years (1747-1973). The monarch was elected on a hereditary basis, whereas parliament was elected by the people during constitutional monarchy 1964-73. Also, the monarchs continued consultations with religious and tribal leaders, and people pledged their allegiance to their rulers.⁵ Islam played a key role in the political affairs of Afghanistan, as monarchs once in power either by force or by succession, used to acquire legitimacy by establishing Shari’ah law, building mosques, supporting madrasas, and patronizing religious leaders. And it was a reciprocal relationship between the monarchs and tribal and religious leaders.⁶ Since consultation and representation are the main tenets of modern democracy, they can be found in the indigenous Jirga (Assembly) system of Afghanistan. Jirga is a tribal mode of convening leaders of different tribes and religious scholars for consultation on momentous issues of the country. In 1923, the first constitution of Afghanistan was adopted by King Amanullah Khan, and it was ratified by Loya Jirga or the grand assembly. In that constitution, the King extended rights to women by giving them equal rights to men, and different liberal values like equal rights were given to non-

² Myers, William Starr. "The meaning of democracy." *The Annals of the American Academy of Political and Social Science* 169, no. 1 (1933): 153-158.

³ Handelman, Howard. *The Challenge of Third World Development*, (New York: Penguin Publishing, 2011): 28-55.

⁴ Wahab, Shaista, and Barry Youngerman. "A brief history of Afghanistan. New York: Facts on File." (2007).

⁵ Runion, Meredith L. *A History of Afghanistan*, (London: Greenwood press, 2007): 67-87.

⁶ Rubin, Barnett R. *Afghanistan: What Everyone Needs to Know*. Oxford University Press, 2020.

Muslims, and separation of power was introduced by a partially elective consultative assembly, an appointed cabinet, and an independent court system.⁷

The second constitution was adopted by King Nadir Shah in 1931 and ratified by a Loya Jirga, which introduced certain reforms to Amanullah Khan's constitution, and introduced both the houses of parliament known as Majlis Aayan (Upper house) and Majlis Milli (Lower house). This was the first time, Afghanistan adopted a representative democracy in its history, by adopting the formal jirgas beside having traditional Jirga system, and it was further democratized by King Zahir Shah in the decade of democracy in 1964 by separating powers between executive, legislative, and judicial organs of government.⁸ During the decade of democracy 1964-73 despite strengthening institutions, political activism was also allowed, which resulted in the formation of different Marxist and religious political organizations, and one such movement was "*Weekh Zalmian*" or awakened youth. And many newspapers were published during that time such as *Payam-i-Emroz*, *Khalq*, *Mardum*, *Wahdat*, *Afghan Mellat*, *Masawat*. The democratic period in Afghanistan ended with a white coup by Dawood Khan in 1974 (King Zahir Shah's cousin, and his Prime minister from 1953-63), and declared himself as the president of Afghanistan by replacing the monarchy with a republican form of government. Dawood Khan could not stay in power for a longer period of time, and he was ousted by the communist coup in 1978.⁹ After the communist coup in Afghanistan, the country changed different authoritarian hands from 1978-2001, which were communists, mujahideen, and Taliban. Their rule finally ended with the establishment of interim administration in Afghanistan through the Bonn conference in 2001.¹⁰

2. Establishing Liberal Democracy Post-Bonn Conference: Issues and Challenges

The post-Taliban regime, the United States of America (USA) and the United Nations convened the Bonn conference on 27th November 2001, consisting of former Jihadi leaders, the Rome delegation and members of civil society. Bonn conference agreed on an interim administration led by Hamid Karzai for a period of six months, which was later on extended by Loya Jirga in June 2002 for a period of two years.¹¹ The power-sharing mechanism in Bonn was based on ethnic divisions, and each group was given a part in the new democratic government as per the part played in resistance against the Taliban. Islamic Party (Jamiat-E-Islami) received the biggest portion of high government portfolios, by occupying the ministry of Defense, interior and ministry of external affairs. And the Taliban and Hezbe Islami Gulbuddin Hekmatyar were deprived of attending the conference, which resulted in a continuation of the war in the country after establishing a new regime.¹² Hamid Karzai after being elected as head of transitional administration appointed a nine-members constitutional drafting commission in October 2002, which was composed of 7 men and two women. After deliberations, a Constitutional Loya Jirga (CLJ) was convened

⁷ Wahab, Shaista, and Barry Youngerman. "A brief history of Afghanistan. New York: Facts on File." (2007).

⁸ Afghanistan legal education project, *An introduction to the constitutional law of Afghanistan*, (Stanford: Stanford Law School): 17-27.

⁹ Dupree, Louis. *Afghanistan*, (New Jersey: Princeton University Press, 1980): 559-569.

¹⁰ Rashid, Ahmed. Taliban: The story of the Afghan warlords. *Pan Macmillan*, 2001.

¹¹ Khalilzad, Zalmay. *The Envoy: From Kabul to White House my journey through a turbulent world*, trans Lutfullah Lutf, (Kabul: Aksos publishing, 2016): 100-120.

¹² Sahel, Sidiqullah. "Taliban, terrorism and war on terror: Assessing US involvement in Afghanistan," *Kardan Journal of Social Sciences and Humanities*, (2020):47-67.

in Kabul on 13 December 2004, which had 502 participants, twenty percent of which were women. The Loya Jirga ratified the constitution on 4th January 2004.¹³ The constitution consisted of 12 chapters and one sixty- two articles. Chapter one of the constitution declares that the constitution will embody the basic principles of Islam, Democracy, pluralism, social justice, rule of law, and Afghanistan's international obligations. Islam is the official state religion and is a source of law-making in the country, not the only source, where sovereignty belongs to the people of Afghanistan. The constituent assembly has amalgamated the rules and principles of Islam and democracy. hence, the Afghan government was deemed a Muslim country, rather than a theocratic one. The constituent assembly has created compliance between religion and democratic principles, and in case of a contradiction between the two, priority should be given to the Islamic and Shari'ah laws, as no law should be repugnant to Islam.¹⁴

2.1 Separation of Powers

Eleven articles in chapter three of the constitution discuss the election, powers and prerogatives of the president. President is elected directly by the people through universal adult suffrage and is both heads of state and government, who exercises executive, legislative and judicial powers.¹⁵ The 2004 constitution established a strong central western style democracy in Afghanistan, where all the powers were concentrated in the hands of the president and central government, and the government authority was divided between executive, legislative, and judicial organs of government.¹⁶

2.2 Presidential Elections and Centralization of Power

From 2004 to 2019, the country conducted four presidential elections in 2004, 2009, 2014, and 2019. The country experienced a transition from an autocratic regime to a democracy with its first presidential election in 2004. People participated in the election enthusiastically and welcomed the change. Around 8.1 million people voted, and a majority of the people expressed support for equal rights, electoral accountability, political parties and peaceful opposition. The 2004 election was a successful experiment, as it was administered by the UN-dominated joint electoral management body, and there were few charges of fraud, which were investigated by UN intervention, hence Hamad Karzai was declared the winner in the first round of elections with 55.37% of votes. Since international actors and the UN were involved in the 2004 elections, that's why around 70% of the people came out to vote? The proportion decreased dramatically in the upcoming presidential elections.¹⁷ Unlike the 2004 elections, the 2009 election was regulated by the Afghan government, not UN, hence faced a plethora of issues and different fraudulent charges were filed, resultantly, the Electoral Complaint Commission had to invalidate more than one million votes, due to which no candidate could achieve the minimum threshold of 50+1 votes. The election went to the second round, but Dr. Abdullah boycotted it, and

¹³ Alep, An introduction to constitutional law of Afghanistan, 27-32.

¹⁴ Abou El Fadi, Khaled M., Said Arjomand, Nathan Brown, Jerrold Green, and Donald Horowitz. *Democracy and Islam in the new constitution of Afghanistan*. Rand Corp Santa Monica CA, 2003.

¹⁵ Alep, An introduction to constitutional law of Afghanistan, 97-110.

¹⁶ Biddle, Stephen, Fotini Christia, and F. Alexander Thier. "Defining success in Afghanistan-what can the United States accept." *Foreign Aff*. 89 (2010): 48.

¹⁷ Miller, Paul D. *Democracy in Afghanistan: The 2014 election and beyond*. Rand National Defense Research Inst Santa Monica CA, 2014.

Hamid Karzai was declared the winner. Moreover, the election result was based on a low turnout, specifically in Pashtun-dominated regions, as the Taliban threatened people and debarred them from participating in an election, resulting in lowering the legitimacy of the government.¹⁸ Nevertheless, the 2014 election was more inefficient and corrupt, as Hamid Karzai dominated the independent election commission, and the commission was no longer an independent body. Also, Karzai was accused of supporting Zalmay Rasool, a Durrani Pashtun, and National Security Advisor to President Karzai. Overall, there were 7000 polling booths, of which 750 remained dysfunctional and closed, due to insecurity and the failure of government in protecting them. In the initial stage of the election, no candidate could win the 50+1 threshold, but in the second round, Ashraf Ghani was declared the winner of 2014 election by the Election Commission. Dr. Abdullah Abdullah and his team strongly opposed the election result and did not accept it, as they accused the Election commission of being involved in fraudulent activities and corruption. Consequently, the "National Unity government" was formed with the active intervention of US secretary of State John Kerry. Ashraf Ghani was declared as head of government, and Abdullah Abdullah as Chief Executive Officer, by sharing the government on a fifty-fifty basis. Abdullah occupied a portfolio, which never existed in constitution of Afghanistan, and the power-sharing agreement between both leaders was a clear violation of constitution. Disagreements over higher government appointments, high centralization of power, corruption, political cronyism, and continuous dissent between the stakeholders over political issues, resulted in popular disillusionment, and weakening democracy in the country, which affected the 2019 presidential election.¹⁹

The presidential election of 2019 experienced the lowest turnout in the last 15 years of Democracy in Afghanistan. The USA was more interested in making a peace deal with the Taliban, instead of engaging in electoral activities with the Afghan government. Compared to all other elections, the security situation this time had exacerbated, as Taliban proliferated the attacks, resultantly, polling stations in peripheries remained closed. Ashraf Ghani was declared the winner in the first round with 923592 (50.64%) votes, Whereas Dr. Abdullah received 39% of the votes.²⁰ The election result was announced at a time, when the country was internally divided between South and North. Ashraf Ghani was leading in sixteen eastern and Southern provinces, whereas Dr. Abdullah led in eighteen Northern and Central provinces of the country, which increased tensions between both the candidates, but this time no one was ready for formation of a coalition government like the previous one. The election commission was accused of corruption and fraud by Abdullah and other rival candidates and hence did not accept the result. Both the leaders compromised on power sharing, and Ghani was declared president, and Abdullah was appointed as Chairman of the High Peace Council. USA also wanted to establish such a coalition government, in order to use it as a bargaining chip in negotiations with the Taliban, hence, a weak government was formed.²¹ Monopolizing power by the central government also led to the weakening of democracy in the country. As per the Bonn conference and 2004

¹⁸ *Ibid*

¹⁹ Chandran, D. Suba. "Afghanistan elections 2014: Positive vote, future of taliban & the challenges for new president." (2014).

²⁰ Cookman, Colin. Assessing Afghanistan's 2019 presidential election. *United States Institute of Peace*. 2020.

²¹ Jamal, Umair. "The high price of Afghanistan's disputed 2019 presidential election," *The Diplomat*, December 24, 2019. Accessed on 05/10/2022.

Constitution of Afghanistan the legitimacy of the government stemmed from popular sovereignty. Max Weber a German sociologist has classified government authority and its legitimacy into three branches namely: traditional, charismatic, and rational-legal authorities. Traditional authority encompasses the patriarchal structure, and monarchical forms of government, whereas charismatic authority comes from a heroic or extraordinary personality, like religious authority, or some freedom fighters. Rational-legal authority is the modern form of institutional authority, which includes western forms of government structure and democracy.²² Afghanistan has always practiced a mixture of both traditional and charismatic authority, ruled by monarchs; consulting religious scholars and tribal leaders in momentous issues. However, throughout the new constitution, USA imposed the third form of authority, which Afghanistan has never experienced before, and with this Afghanistan became a presidential system, in which all the powers were concentrated in the hands of center, sidelining the other two authorities.²³

Moreover, centralizing power and authority has decreased the powers and authority of the local governments in the country. Local power holders and tribal leaders lost their leverage in national issues of the country, the traditional Jirga system lost its value and significance, and everything was left to the mercy of central government, which resulted in deterioration of relations between center and the periphery. 2001 was not the first time, that the central government centralized its power, in order to weaken the local stakeholders in Afghanistan. From 1919-1929, when the modernist Amanullah Khan tried to establish a modern government, based on liberal values, he had to suppress and eliminate the tribal leaders and religious clerics. Similarly, in 1979, when the Soviet Union invaded Afghanistan and established a communist government, all the power was in the hands of the Politburo and the standing committee of the party, the influential people in peripheries and in far-flung areas of Afghanistan parted its ways with the government, both of which resulted in the failure of their governments. Similarly, the experiment of establishing a strong, central western style democracy in Afghanistan post-2001 which sidelined the religious and tribal leaders, led to non-cooperation and weakening ties between central and local governments, which resulted in the failure of democracy in Afghanistan.²⁴

2.3 Parliamentary Elections and The Question of Representation

An important component of democracy is representation, in which citizens choose their representatives through elections and delegate them the authority to make decisions on their behalf. Article 81-109 of Chapter five of the constitution of Afghanistan establishes a bicameral parliament known as *Wolesi Jirga* and *Meshrano Jirga*. Both houses are responsible to represent the will of the people in government, to serve as checks on the powers of executive authority, and also to formulate laws. People to *Wolesi Jirga* are elected through a system of Single None-Transferable Vote (SNTV). In this system, each voter casts a single vote for an individual candidate in one of the electoral constituencies in thirty-four provinces and a nationwide nomadic

²² Bhargava, Rajeev, Acharya, Ashok. *Political Theory: An Introduction*, (New Delhi: Pearson Publications, 2008), 148-158.

²³ Mason, M. Chris. "The strategic lessons unlearned from Vietnam, Iraq and Afghanistan," *Strategic Studies Institute, US Army War College*, (2015): 1-47.

²⁴ Biddle, Stephen, Fotini Christia, and F. Alexander Thier. "Defining success in Afghanistan-what can the United States accept." *Foreign Affairs*. 89 (2010): 48.

constituency.²⁵ After establishing the 2004 constitution, the country has held three parliamentary elections in the year 2005, 2010, and 2018. Where representatives of the people exercised their powers and remained as checks and balances on executive powers of government. Low turnout, tiny shares of votes in a constituency, imbalance in representation in urban and rural areas, and fraudulent activities in elections are the concerns that highly undermined the representativeness of the members of Wolesi Jirga. Due to fraud in elections, it is difficult to trace the number of registered and actual votes with confidence, but the three elections depict an obvious and significant decline in voting. The estimated voting age population between 2005 and 2018 has increased by about 50% or five million, but the turnout in the election of 2018 is lower than in the other two elections. In 2018, 8663531 votes were registered, out of which 3660529 votes were cast, which is lower than in 2010, where 9200000 votes were registered and the turnout was 4216594. Lastly, the registered votes in 2005 were 12500000, for which the turnout was 6400000.²⁶

In the 2018 elections out of 34 constituencies, no elections were held in Ghazni province, in eleven provinces the turnout was less than 30%, and in Paktia, Paktika, and Logar provinces the turnout was less than 20%. Across the country overall, less than 25% of the eligible votes appeared. This low level of people participation undermined the representativeness of the Wolesi Jirga. Several reasons are responsible for this under-representativeness. To begin with, in rural areas security issues and the threat of Taliban attacks prevented people from going to polling stations. Moreover, the dearth of logistical facilities and inadequate electoral administration was one of the important reasons, for preventing people from voting. The government could not supply the voting equipment or other resources for conducting elections. Additionally, popular disillusionment due to fraudulent activities and corruption involved in the process also resulted in people's less participation in elections.²⁷ Lastly, a tiny share of votes in constituencies was a major challenge to representativeness. Collectively in all three elections, elected members have never won more than 38% of votes cast in nationwide elections. And more than 60% of the votes cast were for the losing candidates. In 2005, 35.6% of the votes were dropped for the winning candidates. In 2010, 38% and in 2018 37.6% of the votes were given to the winning candidates. This is a clear subversion of the representativeness of the elected institutions. Obviously, SNTV was responsible for such a huge volume of wasted votes, because it encouraged a large number of candidates to stand for elections, which translated into huge vote dispersion. For a total of two hundred and fifty Wolesi Jirga seats, there were 2775, 2583, and 2566 candidates in 2005, 2010, and 2018 respectively, which ultimately resulted in a waste of votes. In 2005, 2010, and 2018 elections, elected candidates could secure an average of 8406, 6159, and 5183 votes respectively. In 2018, more than half of the winning candidates received less than five thousand votes, which cannot represent all the people in their provinces.²⁸

Nevertheless, one of the obvious reasons for under-representation was an imbalance between Rural and Urban representations. Seats were allocated to provinces in proportion to estimates of their population figure, creating electoral constituencies that vary from two to thirty-two. And it has not been adjusted since 2004. The

²⁵ Alep, An introduction to constitutional law of Afghanistan, 143-155.

²⁶ Tookhy, Farid. "Legislature and legislative election in Afghanistan," *US Institute of Peace*, (2020): 1-25.

²⁷ *Ibid*

²⁸ *Ibid*

population of some provinces has increased since then, but they still have the same representation. Kabul is estimated to have 15% of the population of Afghanistan, but the seats allocated to Kabul are 13%. The elections also favor big urban cities to smaller ones. About 70% of the elected MPs live in urban centers, and 45% of such MPs lived in Herat, Kabul, Kandahar, Mazar-E-Sharif, and Nangarhar provinces, but these provinces only constitute 19% of the country's population. The above-mentioned figures show that urban centers are overrepresented, despite the fact that one out of four Afghans lives in urban areas, hence these MPs do not represent a big portion of the country's population, mostly in rural areas and small towns, and once they are elected they represent a specific community, rather than a province.²⁹ The mentioned reasons resulted in the under-representation of the parliament, which couldn't play the role of a bridge between the government and people.

2.4 Judiciary and its Effectiveness

The Judicial branch is the third important government organ in a democratic regime. Chapter Seven (Article 116-135) of Afghanistan's constitution discusses about the composition and powers of judiciary. It is composed of Primary Courts (Mohkama-E-Ebtedaya), The Courts of Appeal (Mohakem-e-Istenaf), and Supreme Court (Stera Mahkama). The Supreme Court Judges were appointed by the president for a term of ten years. Although, the constitution guarantees the independence of judiciary, but it was actually dominated by the executive and president. Widespread corruption, inefficiency of the judges, lack of infrastructure, time-consuming processes in resolving cases have compelled the people in rural and urban areas to refer their cases of disputes to informal courts namely; religious scholars, Jirgas, and the Taliban, as decisions there were taken promptly, and people had lost trust in formal courts.³⁰

2.5 Corruption in Government Institutions

Corruption, political cronyism, nepotism, absence of social justice, security issues, and Human rights violation by the warring parties, were the main reasons for the collapse of Democratic government in Afghanistan. The governments of both Hamid Karzai and Ashraf Ghani could not transform Afghanistan into a productive economy, rather it remained an aid-dependent one, resultantly they could not provide employment to the youth, which resulted in widespread poverty, hence people were ready to bribe for government jobs, and even finding job in lower levels, which paved the way for corruption in government institutions.³¹ Corruption is a deeply rooted, systematic, and widespread issue in Afghanistan. As per the Asia Foundation reports 73% of Afghans to believe that corruption is a major issue, and has caused serious problems in the state-building in Afghanistan. According to the National Corruption Survey, 73% of the people do not trust local governments and government institutions. In 2019 Afghanistan ranked 172 out of 180 countries by Transparency International and was declared as the 8th most corrupt government in the world. Also, as per World Bank worldwide governance indicator, Afghanistan is amongst ten worse performers in governance affairs. Corruption has been endemic in the governance of Afghanistan. In 2018 an estimated 4.8 million Afghans were bribed for seeking jobs, interacting with

²⁹ *Ibid*

³⁰ Alep, An introduction to constitutional law of Afghanistan, 159-184.

³¹ Gaan, Narottam. "Youth bulge: Constraining and reshaping transition to liberal democracy in Afghanistan." *India Quarterly* 71, no. 1 (2015): 16-36.

provincial government offices, meeting security services, using healthcare facilities, and receiving education services, and resolving their disputes in formal courts of justice.³²

The security sector was a trusted institution in Afghanistan, but corruption was evident in both the army and police sectors. The biggest fraud and corruption in the security sector was “ghost soldiers” who were present on paper, and used to receive salaries, but on the ground, they were all missing. As per 2016 reports about half of Afghan soldiers were ghost soldiers. The remaining higher officials and military generals were mostly engaged in drug trafficking and did not pay attention to the security of the people. Similarly, theft from the soldier’s food and petrol from their vehicle was commonly observed.³³ Moreover, the Afghan National Army was hardly a nationalist army, as most of its recruited personnel were loyal to warlords, who were recruited from the militant ranks of Mujahideen, and the commando forces were directly trained and equipped by USA, hence the central government of Afghanistan could hardly control or exercise authority over them. The army was not willing to fight against the Taliban, as some of them were hardly patriotic, and were lacking the cause to fight, whereas as far Taliban were concerned, they were very clear about their ambition, which was to defeat USA. American soldiers described Afghan Army as unmotivated, undisciplined, and lacking initiative, where most of the police ranks were filled by criminals, who were always busy in making money, and drug trafficking by their generals, and high-rank officers.³⁴ One of the main reasons for corruption and inefficiency in government institutions was including the warlords in government, and blessing them with high government portfolios post-Bonn conference in order to maintain security, and continue fighting against Taliban. These warlords enjoyed leverage in peripheries and provinces, and they recruited people to the military, civil services, and provincial administration based on their loyalty to these warlords, instead of merit or qualification of individuals. The appointed individuals were incompetent in governing the affairs and were engaged in bribery and other illicit economic activities, which became a hurdle later on for the central government’s reforms in recruitment, and they could easily challenge the authority of the government. Not only formal military officials, the “*Arbakee*” or Afghan Local Police were also active in provinces, and are accused of human rights violations, which resulted in a widening gap between state and society. As per the Integrity Watch survey, 43% of Afghans believe that due to corruption people in their areas referred to Taliban. And 62% of people believe that corruption led to the Taliban’s expansion.³⁵

2.6 Fundamental Rights

Thirty-eight articles in chapter two of the constitution talk about the fundamental rights and duties of the citizens of Afghanistan. The 2004 constitution guarantees all civil, political and socio-economic rights to the citizens of Afghanistan. Civil rights ensure every Afghan the right to life, liberty, equality, freedom of opinion, religious

³² Bak, Mathias, Kukutschka, Roberto M. B. “Corruption in Afghanistan and the role of development assistance,” *Transparency International*, (2019): 1-24.

³³ *Ibid*

³⁴ Mason, M. Chris. “The strategic lessons unlearned from Vietnam, Iraq and Afghanistan,” *Strategic Studies Institute, US Army War College*, (2015): 1-47.

³⁵ Bak, Mathias, Kukutschka, Roberto M. B. “Corruption in Afghanistan and the role of development assistance,” *Transparency International*, (2019): 1-24.

and cultural freedom, and freedom of movement. The political rights ensure that people should have the right to dissent against the government, and form peaceful and unarmed assemblies, and participate in elections and decision-making processes of the country. Socio-Economic rights guarantee the right to education, right to higher education, right to healthcare and right to work. The governments after 2004 had taken fair measures and steps to protect and guarantee all these rights and freedom to the people, but it has partial achievements, and could not guarantee and achieve what the Democratic government was supposed to.³⁶

Although, the constitution ensured fundamental rights to the people of Afghanistan, but the government failed in providing them to the citizens. As a government, USA and NATO were all accused of human rights violations namely; night raids in rural areas, aerial attacks on civilians in the name of operations against Taliban, arresting innocent people and detaining them in Bagram air-base all resulted in common people's suspicion about USA's presence and the democratic regime in the country. People in villages joined hands with Taliban, in order to retaliate for the atrocities of "Arbakees", local militias and US troops. This recklessness by US forces in their operations led to the discontent of the people and resulted in failure of democratic and government institutions.³⁷

As per the Freedom House's reports Afghanistan is in "not free" category in the region, with no political and civil rights ensured to its citizens, due to long-standing violence, inefficiency, corruption and other problems.³⁸ Freedom of press and opinion are the core of liberal democracy and it is the responsibility of each government to protect and ensure each individual and media group practicing these rights. But, the democratic government of Afghanistan could not succeed in protecting the safety and security of media persons, and women working in media. A lot of journalists have been allegedly targeted and killed by the Taliban, government officials, warlords and anonymous people (responsibility not taken by anyone) since 2002. 2014 was the deadliest year for media persons, and as per Human Rights Watch, journalists try to respond to the threats with self-censorship.³⁹ The target killing of journalists increased after the Doha peace talks, to which Taliban were considered the main culprit because their fighters and militants used to attack and kill journalists in provinces, as these journalists were perceived to be part of false western propaganda against Taliban.⁴⁰ According to reporters without borders, a press freedom watchdog at least more than 70 media workers including 16 foreign journalists have been killed, and more than 40 media outlets have been attacked since 2001, as a result of most of the journalists due to insecurity have left the country.⁴¹ The constitution guaranteed freedom of expression, opinion, press freedom, religious freedoms, and the right to oppose government and the right to peaceful assemblies, but in reality, there were a lot of hurdles and restrictions in exercising all these rights. The discussed situation augments Robert Dahl's argument, that for democracy to succeed it should be accepted by the people and society from within, it should only be institutionalized as

³⁶ Alep, An introduction to constitutional law of Afghanistan, 189-226.

³⁷ Khurram, Karim. *Salwikhit Kala Pe Topan Ke*. Aksos Publishing Kabul, 2019: Page no.

³⁸ Ayres, Alyssa. "Human rights and democracy in South Asia," *Council on Foreign Relations*, (2020): 1-14

³⁹ Human Rights Watch, "Afghanistan: Media under attack," *Human Rights Watch.com*.

⁴⁰ Staff, Reuters. "Taliban condemned for threats to media in Afghanistan," *Reuters.com*, June 25, 2019. Accessed on 10th October 2022.

⁴¹ Saif, Shadi Khan. "Afghanistan: Media freedom in downward spiral," *Anadolu Agency*, 12.09.2020. Accessed on 10th October 2022.

per constitution, the society should whole-heartedly accept the differences, and live peacefully and in a harmonious way with each other, and democracy should be considered as the only game in the city. Whereas in Afghanistan people did not accept the regime wholeheartedly and considered it as a temporary phenomenon. As per CNN reports, civilians and politicians in Afghanistan believed that USA would at some point leave Afghanistan, and after the departure of US the democratic principles, and the army would not last long in the country.⁴²

3. Liberal Democracy in Afghanistan Post-Bonn Conference: Evaluation

From 2001 to 2020 USA has spent more than 2 trillion dollars, of which 778 billion is only military expenditure. Despite spending an exorbitant amount of money, the country could not eliminate terrorism, and Taliban militarily, and they failed in establishing a democratic government in Afghanistan. The basis of democratic government in Afghanistan was held wrong, as the form of government that was adopted by US and UN was not in compliance with Afghan culture and traditional authority. Plus, the power-sharing mechanism in Bonn was based on ethnic divisions, which created and strengthened rifts between Afghan society, which led to the weakening Afghan government. USA's approach in Afghanistan was wrong, as reports suggest, and even the newly elected president Joe Biden claimed, that "USA in Afghanistan did not intervene for nation building where they can build democratic institutions, rather it was only retaliation against the culprits of 9/11 attacks." The night raids in rural areas, aerial attacks on villages, detaining innocent people, and torturing them, corruption in government institutions, inefficient government services, incompetent and corrupt military officers, and lack of cooperation between government organs have all resulted in the failure of Democratic government in Afghanistan, which paved the way for the revival of Taliban in Afghanistan.⁴³

Moreover, the USA-Taliban peace agreement was also an important element in weakening the democratic government in Afghanistan. The asymmetric talks between both parties had begun in July 2018, which transacted more than 10 rounds of negotiations and finally signed the agreement on 29th February 2020. In the overall peace process USA had sidelined Afghan government, and their representative to Afghan peace process Zalmay Khalilzad was reluctant to brief Afghan president about the negotiations with Taliban. Although USA, had assured that, the country would support their Afghan ally, and would ensure intra-Afghan dialogue and a peaceful transfer of power, but the Biden administration had miscalculated the overall peace process, as the agreement had given more benefits and leverage to the Taliban, which created a jubilant feeling amongst its fighters, hence reluctant to join peace talks with Afghan government. Through that agreement US withdrew all its forces from Afghanistan on 31st August 2021, and Taliban captured Kabul province on 15th August 2021, with all other provinces.⁴⁴ The movement announced their interim government, and has declared their administration a theocratic one; by naming it as "Islamic Emirate of Afghanistan." Islamic Emirate of Afghanistan has declared that their government would be based on Shari'ah laws; hence nullifying the earlier democratic

⁴² Mason, M. Chris. "The strategic lessons unlearned from Vietnam, Iraq and Afghanistan," *Strategic Studies Institute, US Army War College*, (2015): 1-47.

⁴³ Sahel, Sidiqullah. "Taliban, terrorism and war on terror: Assessing US involvement in Afghanistan," *Kardan Journal of Social Sciences and Humanities*, (2020):47-67.

⁴⁴ Coll, Steve, Entous, Adam. "The secret history of the US diplomatic failure in Afghanistan," *The New Yorker*, December 10, 2021.

principles mainly elections and consultation with the people and the movement considers democracy a western phenomenon and not applicable for Afghanistan.⁴⁵ Taliban has misunderstood democracy and compatibility of democratic principles with Islam, and also the origin of democracy in Afghanistan, as Islam allows democratic principles and also democracy in Afghanistan dates back to the constitutional monarchy in 1964.⁴⁶ The article would provide a solution to the form of government in Afghanistan post-Taliban revival into power in 2021.

4. Compatibility of Islam and Democracy

There is no unanimity amongst Muslim scholars about compatibility of Islam and democracy. Many Islamic scholars and jurists believe that Islam is a comprehensive religion, which covers all (socio-political, economic, and cultural aspects) of human lives and there is no separation of Religion and state. Hence, there is no compatibility of Islam and Democracy. In Islam, Allah is the only sovereign and ultimate source of authority (Tawhid- al- Hakimiyyah), and the king or ruler on earth is the heir and representative of Allah, who does not have legislative power of his own, rather he would only implement the laws of Allah on his creatures.⁴⁷ Islam like other religions does not accept separation of religion from politics, hence less space has been provided for compatibility of Islam and democracy, as democracy talks about popular sovereignty, whereas in Islam sovereignty belongs to God. Prominent Muslim scholars Such as Imam Ghazali, and Sayed Qutb, all argued that State should be regulated by Islamic principles, where the ruler should be implementing the rules of Allah on earth. Abu Hamid Muhammad Al-Ghazali aka Imam Ghazali (1058-1111) an Islamic scholar and a jurist emphasized on creation of a state for regulating affairs amongst human beings, as absence of an authority would lead to conflict between them. Ghazali reiterated that religion and politics are inseparable, and both would strengthen each other. Caliph should be elected through Bay'a (Oath of allegiance to the leader) by the people. He was of the opinion that state affairs should be regulated in accordance to Shari'ah law, and the Caliph should implement the rules and laws of God on earth. Both religion and politics are incumbent for each other, as the Caliph does not necessarily be *Aalim* (religious scholar), but he should consult in political affairs with the intellectual people.⁴⁸

Sayed Ibrahim Hussain Qutb aka Sayed Qutb (1906-1966) an Egyptian Islamic scholar wrote a book "*Maalim fil Tariq*" "signposts along the road" in 1964. In his book Qutb discussed about the mode of Islamic state, and has criticized the modern forms of government, by declaring them Jahiliyyah (ignorance). Qutb added that, socialist, liberal and nationalist democracies are manmade authority and God plays no role in it. In all these Jahiliyyah systems the legislative authority is located in legislative institutions. These laws and regulations are not from God's authority but are derived from priests, nation's elders, and secular institutions that control legislative authority without reference to divine law. These institutions claim sovereignty in the name of people but in reality, sovereignty belongs to Allah alone. Hence, he calls all the Muslim societies as Jahiliyyah societies as long as they claim legislative authority to

⁴⁵ Rahimi, Haroun. "What the Taliban may be getting wrong about Islamic governance," *Aljazeera*, 24 August 2021.

⁴⁶ *Ibid*

⁴⁷ Asad, Talal. "The idea of an anthropology of Islam." *Qui Parle* 17, no. 2 (2009): 1-30.

⁴⁸ Balck, Anthony. *The History of Islamic Political Thought*. Islamabad: Routledge, 2001: 20-60.

themselves and construct social life on the basis of modern science while paying lip service to Islamic belief.⁴⁹ The above-mentioned arguments indicate that Islam and democracy are incompatible, as democracy is a man-made institution where the sovereignty belongs to people, and human are law making authority, whereas in Islam sovereignty belongs to Allah, and he is the supreme law-making authority, and government or caliph has the duty and responsibility of implementing those laws. However, moderate Muslim scholars believe in compatibility of Islam and democracy, and they try to reconcile both. According to these moderate scholars, Democracy poses no challenge to Islam, as according to them “Democracy is Islam itself” or “Islam is democratic,” Or “Islam does not need western thought, as it has the seeds for all reforms.” The concept of Ijma (consensus) in Islam has been used by the modernist to demonstrate its democratic character. The origin of the notion is in the hadith of Prophet Muhammad (PBUH) where he says “never will my community be united in an error.” Also, he states that “What is good, is what the Muslims say it is.” The Ijma is considered as the fourth source of legislation, as long as the decision is not opposed the Shari’ah. So, Muslims have a consensus on democracy, and is compatible with Islam.⁵⁰

The most prominent moderate Muslim intellectuals are Ali Abdul- Raziq, Khalid Muhammad Khalid, and Rasheed Reza, who were influenced by the writings of Egyptian scholar Mohammad Abduh. According to Khalid Muhammad Khalid and Rasheed Reza, Islam is contingent with secularism and is adaptable to modern system of government. So political matters should be managed by the people in accordance with the conditions of time. Islam will condone any form of government if it promotes the general well-being.⁵¹ Likewise, Ali Abdul Raziq argues that Caliphate is a historical phenomenon, as it was developed after the death of Prophet Muhammad (PBUH), and has not been static, but has a dynamic nature, and changed from time to time. According to him, Caliphate is synonym of government, and could adopt whatever form it takes from democracy to dictatorship. Abdul Raziq believes that unifying the whole world under one religion is possible, but unifying them under one single government is utopian. As human beings are different, so they would be ruled differently, and God has decided to leave to humans the responsibility to govern themselves and Islam does call for a democratic system.⁵²

There are two broader commonalities between the traditional and modernist Islamic thinkers, and they are Consultation (shura) and Allegiance (Bay’a). Modernist theologians take these two as the basis for the contemporary democracy in Muslim world. Shura is Islamic political thought, refers to deliberations conducted with the aim of collecting and discussing different opinions on a particular subject in order to reach a decision. The people in Shura are known as Ahl al- hal Wal- Aqd, the Shura people have the right to criticize the ruler, if he diverts from the path of Islam. Modernist scholars equate this with the opposition system, freedom of speech and opinion in democratic institutions. Also, after Hazrat Omar the Third Caliph of Islam was elected by a shura of six members, after three days of deliberation, which opens the way to electoral democracy. Bay’a also justifies the present democratic principles.

⁴⁹ Euben, Roxanne L. *Enemy in the Mirror: Islamic Fundamentalism and The Limits of Modern Rationalism: A Work of Comparative Political Theory*. Princeton: Princeton University press, 1999: page.

⁵⁰ Al-Aqqad, “Democracy in islam,” *Journal of Religion and Society*, (1952): 164-180.

⁵¹ Balck, Anthony. *The History of Islamic Political Thought*. Islamabad: Routledge, 2001: 20-60.

⁵² Etmueller, E.U. “Islam and democracy,” *Astrolabio: Revista Internacional de filosofia*, (2006): 16-2

Bay'a is a contract between a Muslim ruler and his obedient, and it is a contract of give and take. It is an oath of loyalty given to ruler based on certain conditions, which is revocable. A prominent Muslim scholar Al-Mawardi is of the opinion that if the ruler diverts from the right path, and his rule is against the interests of the Muslims, they can revoke their allegiance to Caliph. This providing allegiance to a ruler, and revoking it back is similar to the John Lock's social contract theory in modern democratic institutions. Also, the time restrictions and specifying the tenure of ruler in democratic governments is to give the citizens an alternative option for their ruler.⁵³ By keeping the above arguments about Bay'a and Shura, there is a compatibility of Islam and democracy. And Afghanistan's foundation was laid down on democratic principles, as Ahmad Shah Abdali (The architect in Chief of modern-day Afghanistan) was elected through consultation of a Jirga (Afghan Traditional assembly of community elders) and all the Jirga members pledged their allegiance to Ahmad Shah Abdali. And the trend was later followed by the upcoming monarchs of Afghanistan, until Zahir Shah established a constitutional monarchy in 1964 by extending rights to the people. Hence democracy in Afghanistan is an indigenous concept, not a foreign imposed phenomenon.⁵⁴

5. Future Prospects for the Afghan Government

Afghans can follow the moderate way by following the type of government which is compatible to both Islam and political culture of Afghanistan and is acceptable to all its people. Hence, the upcoming Afghan government can go for a decentralized democracy in the form of either federalism, in which the power should be distributed between center and peripheries, or Consociationalism, in which power is exercised collectively by all the ethnic groups, and would have the power to veto government policies. However, the major issues with these approaches are that federalism is possible in societies where there is a complete demarcation between ethnicities, and each group has an identified geographical territory, which does not imply in case of Afghanistan, as in Afghanistan major ethnic groups reside collectively, especially in North. Also, Federalism is not conducive for Afghanistan, because the country has suffered from forty years of war, so decomposing the power would mean weakening the central government, and allowing outside interventions. Moreover, one of the principles of federal government is diversity, excessive number of population and wider geographical area, whereas, none of these are visible in Afghanistan. On the other hand, Consociationalism is comparatively favored, but this would allow a small number of ethnic entrepreneurs follow ethnic politics, where power would be distributed based on size of ethnicity, which would further increase the rift in society, and the country has already experienced such type of coalition governments post-Bonn conference.⁵⁵

In the shades of history Afghanistan has experienced a mixed sovereignty of religious and tribal leaders with monarchy. The King of Afghanistan consulted with community leaders and religious clerics in all important issues. In order to resolve the political stalemate in Afghanistan, the country should go for this mixed approach including all three types of Max Weber's authority constitutionally. Where rational-

⁵³ Balck, Anthony. *The History of Islamic Political Thought*. Islamabad: Routledge, 2001: 20-60.

⁵⁴ Wahab, Shaista, and Barry Youngerman. "A brief history of Afghanistan. *New York: Facts on File*." (2007).

⁵⁵ Biddle, Stephen, Fotini Christia, and F. Alexander Thier. "Defining success in Afghanistan-what can the United States accept." *Foreign Affairs*. 89 (2010): 48.

legal authority would work in compliance with both charismatic and traditional authority. The legitimacy of government would stem from popular sovereignty, through regular and transparent election; based on universal adult franchise. The executive branch of government should be a homogenous body, ruled by a specific political party led by the president; who should directly be elected by the people, and civil services would be run by Technocrats, and educated people. Whereas, parliament would be run by tribal leaders, religious scholars, and educated elites, who will be responsible for law making and keeping an eye on the activities of government, and both political parties and independent candidates would be members of legislative assembly. Judiciary would function as per Hanafi Jurisprudence, dominated by religious clerics and judges with studies in Shari'ah law, and ensuring personal laws of minorities. And provinces should be given some level of autonomy, in order to regulate their internal affairs.⁵⁶

6. Conclusion

Afghanistan moved towards a liberal democracy post-Bonn conference in 2001. However, democracy could not consolidate in the country due to highly centralization of power, corrupt and inefficient government institutions, infringement of constitution, establishing democratic culture as a top-down approach and USA's superficial attitude towards peace process and ignoring Afghan government. With the collapse of the democratic government, questions about the future form of government has created a discussion amongst stakeholders. History has depicted that neither a highly centralized government can cure the maladies of Afghanistan, nor is a federal government a solution. However, the people of Afghanistan can think of establishing a democratic government which is in alliance with Islamic principles, and amalgamate three levels of authority, namely; traditional authority, charismatic authority and rational legal authority. Central government would be run by a homogenous body, led by a president, elected by popular vote, and that cabinet would work closely with tribal and religious leaders by decentralizing power, and giving provinces some level of autonomy. And people would be connected to the central government of the country through Jirgas (*Wolesi jirga, Meshrano Jirga and Loya Jirga*), through which the government would take all the important decisions of the country.

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⁵⁶ *Ibid*