



History of Parliament in Afghanistan

Jamshid Nikjo Azizi

Teaching Assistant at Department of Public Law, Faculty of Law and Political Science, Herat University, Herat - Afghanistan

Abstract: The history of the parliament in Afghanistan dates back to the first decade of the current solar century or the reign of Amanullah Khan. During this period, which coincided with the end of World War I and the formation of national governments, especially in Europe and the spread of democracy, Afghanistan, along with some other Islamic countries, took steps in this direction and established a council that became a parliament in the following years. The study looked at the history of parliament in Afghanistan to find out what developments are taking place in the context of history. The extent to which the policy in Afghanistan has affected the constitution, especially the structure and functions of parliament, and the extent to which the current Afghan parliament, which was established under the 1382 constitution, has been affected by these laws. This research is a developmental research and has been done using library methods. The present study showed that during the monarchy, the process of strengthening the parliament and the role of the people through the parliament in the form of parliament was progressing by the constitution and with the coup of 1352, the regression process began again, and by the end of the Taliban era, we had witnessed lack of the parliament in the political and legal affairs of the country, and it was crystallized only within the context of the constitutional laws of the parliament. With the defeat of the Taliban and the coming to power of the new regime, we are witnessing the strengthening of the parliament and the increase of the people's role in social change from the perspective of the constitution, and the parliament on which it is based.

Index Terms - Constitution, Regulations, Principles, Parliament, Monarchy, Republic.

I. INTRODUCTION

Parliament is the result of the separation of powers in democratic systems and of the outstanding manifestations of democracy. The way the parliament is formed and the role of the people in electing its members show how democratic that country is. An effective parliament that can carry out its tasks based on the necessary standards, such as the principle of representation of the people, legislation, budget approval and development programs, proper monitoring of the functions of the executive branch, dismissal and installation of high-ranking government officials and so on requires a series of conditions that must be considered in its formation. And in the constitution of the country, the necessary guarantees will be created for it. Afghanistan has had a history of holding parliament for nearly a century, and it is natural that this important institution has had many ups and downs during this century to reach its current state. Understanding the history of the parliament and the course of its development in Afghanistan will help us find a correct understanding of the Afghan National Assembly, which was formed on the basis of the 1382 Afghan Constitution, and to find out the reasons for this structure and its place in the history of parliament in Afghanistan.

II. RESEARCH OBJECTIVES:

THE MAIN PURPOSE

To study the background of the parliament from the perspective of the Afghan constitution and to recognize the positive and negative points of each of the constitutions in order to recognize the factors that have contributed to these changes.

ALTERNATIVE OBJECTIVES

I. Recognizing the impact of the prevailing political atmosphere in the society on the structure of the parliament and its duties and competencies.

II. Recognizing the structure, duties and competencies of the Afghan parliaments from the perspective of the constitutions.

III. RESEARCH QUESTIONS

MAIN QUESTION

What is the process of parliamentarism in Afghanistan from the point of view of the constitution? And what factors have contributed to the positive and negative changes in each of the constitutions?

SUB-QUESTIONS

- I. What effect have political developments and coups had on the role of the people in their destiny, especially through representation in parliament?
- II. What was the structure of the parliaments in Afghanistan, which were formed on the basis of each of the constitutions? And what duties and competencies do they have?

IV. IMPORTANCE AND NECESSITY OF RESEARCH:

The importance of this research is to gain an understanding of the parliament in Afghanistan and to identify the factors that have contributed to the reduction and increase of the powers and duties of the parliament in different historical periods in order to get an accurate understanding of the existing parliament. The necessity of studying the parliament is that if we need to change the parliament in Afghanistan, we will find a clear picture of its background so that we can provide a parliament that fits the needs of the society.

V. RESEARCH METHOD

The method used in this research is analytical-descriptive and comparative study to collect information using library method and using authoritative scientific books that are often written in Afghanistan by Afghan authors and is made up of rules and procedures.

The present study aims to achieve the objectives of the research and answer the questions raised first, the study debated council in several different periods historically and politically, the beginning of the council in the period of the regulations and the principles, then the council in the decade of democracy, the council in the first republic, the council in the period of the rule of the Democratic Party and, ultimately, the Council in the 1382 constitution, which is the post-Taliban era. Given the political differences that have arisen in the political and social spheres, let us understand its impact on the constitution, especially its important part, which is parliament.

The conclusion of this study is a general summary presented as a conclusion in which the positive and negative points of each of the laws in relation to its parliament will be clearly stated in order to have a better understanding of it.

VI. COUNCIL IN GOVERNMENT REGULATIONS AND PRINCIPLES AGAINST AFGHANISTAN:

The parliament in Afghanistan dates back to the early twentieth century and the first cornerstones were laid during the reigns of Amanullah Khan and Nader Khan. Although in these periods, considering that it is a royal system and the Shah (king) has broad powers and a weak role and position, but as a people's assembly, it is important to remove the ruling authority in order to pave the way for future parliamentary movements. During the two periods of the government's rule of law and the principles against Afghanistan, the council had different powers, duties, formations, and positions, so it is required that each be discussed separately

VII. COUNCIL DURING "BASIC GOVERNMENT REGULATIONS AGAINST AFGHANISTAN'S" RULE

After the establishment of Amanullah Khan and the adoption of the first legal document, which is referred to as the first constitution (Rasooli, 1392: 75) and in the history of Afghanistan's constitution, the basic government regulation against Afghanistan is a new chapter in the political legal structure of Afghanistan. In this constitution (the basic regulations of the government against Afghanistan), despite being royal and granting many powers to the king in the structure of the system, the formation of councils was mentioned, which somehow showed the role and position of the people in the system (Niaz, 1392: 36). According to Article 39 of the constitution, there is a government council at the Dar alSaltanah Center. Although the council is advisory (Rasooli, 1392: 77) and half of its members are elected by the king from among government officials, the other half of the members are elected by the people (Government's regulations against Afghanistan article 40. And Mehraban 1368: 66). In that case, for the first time in Afghanistan's history, such an institution is being formed so that people can express their views, albeit limited in state affairs. Many authors recognize it as Afghanistan's first parliament and the first cornerstone of Afghanistan's political history (Mohammadi, 1395: 248 and Mehraban, 1368: 65)

The characteristics of the council during the rule of the regulations are:

- The council consists of two types of members, natural members, who are elected by the king from among government officials and make up fifty percent of the total members, and elected members who are equivalent to natural members and are elected by the people (Government's regulations against Afghanistan, Article 40)
- The council has the power to advice and is essentially an advisory body (Government Regulations against Afghanistan, Article 39.)
- The council has no legislative authority.
- The council can provide the government with what it needs in the fields of industry, trade, agriculture and education, and the government is not obliged to implement it. (Government Regulations Against Afghanistan, Article 42, Paragraph 1)
- If the council finds that the government's taxes and products are inconsistent with the governing principles, it has the authority to raise the issue with the government alone, and it does not have the authority to make any reforms. (Government Regulations against Afghanistan, Article 42, Paragraph 2)
- One of the most important duties and competencies of this council was to sue the people for their rights, which were granted to the citizens in accordance with the accepted government rules in such a way that if they witnessed the violation of the accepted rights of the citizens, they would have the authority to appeal to the government.(Government Regulations Against Afghanistan, Article 42, Paragraph 3)
- The Council of State has the authority to review regulations (normal rules), general budgets and international treaties that Afghanistan signs. (Government Regulations against Afghanistan, Articles 4649)

As a result, it can be said that the council or parliament during the rule of regulations was an advisory chamber that dealt with legislative and public budgets only in the field of legislation and budgeting and in other cases presented and proposed issues to the government officials. In decisionmaking times, the Council of Ministers and the King himself had a higher position, so this institution cannot be considered in the full sense of the word as today's parliament, but as the first experience in public participation in government, it can be given a historical value.

VIII. COUNCIL DURING THE RULE OF "BASIC GOVERNMENT PRINCIPLES AGAINST AFGHANISTAN"

The constitution of the Nader Khan dynasty, known as the Basic Principles of the Government against Afghanistan, took great strides in the establishment of the parliament with the explicit provisions of the National Assembly, and for the first time in the history of Afghanistan We witnessed the creation of modern and contemporary parliament. (Mehraban, 1368:115) During this period, the parliament had two chambers, the House of Representatives and the Senate, known as the House of Lords.(Rasooli, 1392.79) During this period, the parliaments had a common legislative authority that the

House of Representatives was appointed by the people and represented all of people, while the House of Lords (senate) was elected by the King from among experienced and insightful individuals. (Payesh, 1368: 7)

The parliament has the following characteristics based on the provisions of the government's basic principles against Afghanistan:

The council has two parliaments, namely the National Assembly and the House of Lords.

-Members of the House of Representatives (National Assembly) are all elected by the people in this law

(Basic principles of the Government against Afghanistan, Article 28), while all members of the Senate (House of Lords) are elected by the King. (Basic Principles of Government against Afghanistan, Article 67)

Both houses of parliament have legislative powers, but the National Assembly (House of

Representatives) has more powers and a higher position. (Basic Principles of Government against Afghanistan, Article 70)

-The approval of the National Budget and Government Financial Affairs is a special task of the National Assembly. (Basic Principles of Government against Afghanistan, Articles 42 and 43)

-It is within the competence of the National Assembly to amend and repeal laws, regardless of whether they are proposed by the parliament or the minister. (Basic Principles of Government against Afghanistan, Article 44)

This law clearly states the process of legislation and the implementation of the activities and duties of the National Assembly and specifies the cases under Articles 27 to 72.

In the end, it can be concluded that in this period, the council witnessed significant differences compared to the previous period and the rule of law, and from the point of view of duties, it includes a wider range of activities that most of the world's parliaments do. Granting jurisdiction, amending and repealing laws, approving government budgets and finances, representing the nation, approving treaties and granting domestic and foreign concessions of any kind, approving borrowing from domestic and foreign sources, deciding to establish and extend The railways and other duties have been delegated to the House of Representatives, which is directly elected by the people. (Payesh, 1368: 7) Therefore, the parliament has a high position in this period.

Although the parliament during the rule of the basic principles of the government against Afghanistan has gained somewhat the qualifications of a modern parliament, these competencies and duties are not considered sufficient to fully represent democracy, including two important and specific shortcomings. one of them is the incompetence of granting a vote of confidence to the ministers and other state officials and holding them accountable, and the other is the complete appointment of all members of the House of Lords by the king (Mehraban, 1989: 115), Which can lead the legislative process and other activities of the parliament to the will and opinion of the king and his inner circle.

IX. COUNCIL IN Decade OF DEMOCRACY

In 1343, a new constitution was drafted in Afghanistan, which marks the beginning of a new chapter in the contemporary history of Afghanistan, called the Decade of Democracy (Rasouli, 1392: 81). This constitution has some features that distinguish it from the previous constitutions. And it gives it an edge. The Constitution of 1343, in addition to removing the positive points of the Constitution of 1310, such as the enactment of laws, the approval of the budget, and the ratification of treaties, had other principles that further demonstrated democracy and established it as a turning point in contemporary Afghan history. (Mehraban, 1368: 407)

The highlights of the Constitution of the Decade of Democracy are as follows:

- The parliament during this period has two chambers called the Wolesi Jirga (House of Representatives) and the Meshrano Jirga (Senate). (Constitution of 1343, Article 42)

- The members of the Wolesi Jirga are elected by the people and by free elections, but the members of the Meshrano Jirga are elected in accordance with special rules, with one-third appointed by the Shah, one-third by the Jirga or Provincial Councils, one person from each provincial council and one-third from the residents of each province are elected through free, general and secret elections. (Rasouli, 1392: 90 and the Constitution of 1343, Articles 43 and 45)

- The terms of the election were set out in the law, and were granted to the two simultaneous duties of lawyers, especially those that were important, such as officials, judges and members of the government. (Constitution of 1343, Articles 46 and 47) Both houses have joint legislative powers, but the Wolesi Jirga holds a higher position as a fully elected body. (Constitution of 1343, Articles 74, 75 and 76)

- Council discussions are open to the public, unless there is a specific reason and justification in accordance with the law, and the council's decision is made by a majority of the present members, unless otherwise provided by law. (Constitution of 1343, Articles 57 and 58)

- The speaker of the Meshrano Jirga was elected by the king from among the members of parliament.

(Constitution of 1343, Article 60)

The government is responsible to the Wolesi Jirga. According to this constitution, the Wolesi Jirga can impeach the government and ask the Prime Minister and the ministers on certain issues. (Constitution of 1343, Articles 65 and 66)

The king has the authority to dissolve parliament. (Constitution of 1343, Article 63)

oUnder the constitution, ratification of treaties, sending an Afghan army abroad, granting concessions and monopolies, issuing money and borrowing are among the council's powers. (Constitution of 1343, Article 64)

The approval of the budget is one of the exclusive powers of the Wolesi Jirga, and the Meshrano Jirga only gives advisory opinions, (Constitution 1343, Article 75)

At the end of this section, it can be concluded that the Constitution of 1343, in terms of democracy, has advantages over its previous constitutions and has many competencies. In this constitution, the Wolesi Jirga has a higher role and position than the Meshrano Jirga, and is considered an institution that is fully elected by the people and represents the will of the people and demonstrates democracy. Adoption, amendment and repeal of laws, approval of decrees, approval of budgets, approval of international treaties, issuance of money, supervision of government actions, approval of ministers, parliamentary immunity and such things are prominent points that give this law high value and status.

The Constitution of 1343 in the discussion of the formation of the council and its competencies, while being considered a big step in the field of parliamentarism with its principles, but it has some shortcomings that need to be mentioned in some examples. The first weakness of this council is that the king has the authority to dissolve the council and can lead all members, including the Wolesi Jirga, to the end of the mission. (Article 1343 of the Constitution, Article 63) Another point in this law is the appointment of one third of the members of the Meshrano Jirga by the Shah, which can affect the influence of the Shah over the legislature (Mehraban, 1368: 407). The title of the head of the Meshrano Jirga by the Shah (Payesh, 1368: 18) could increase the problem of the Shah's influence and that of the upper house of government, especially the Meshrano Jirga. (Constitution of 1343, Article 63) Another point in this law is the appointment of one third of the members of the Meshrano Jirga by the Shah, which can affect the influence of the Shah over the legislature (Mehraban, 1368: 407). The title of the head of the Meshrano Jirga by the Shah (Payesh, 1368: 18) could increase the problem of the influence of the Shah and the high-ranking government team, especially the Meshrano Jirga.

X. COUNCIL IN THE FIRST REPUBLIC:

In 1352, the Afghan monarchy was overthrown by a military coup, and the first republican system was formed in Afghanistan. After the fall of the monarchy and the establishment of the republican system, it was thought that the system would move towards democratization and individual rights, and freedoms would increase, and a powerful parliament that would represent the will of the nation would emerge in society. But over time, it became clear that officials, especially the president, was reluctant to do so, and by the beginning of 1356, the country was virtually deprived of a new constitution that would define the system and its structures (2). In 1356, we witnessed the creation and publication of a new constitution for the Republic of Afghanistan, which not only did not improve the political situation in Afghanistan, but also limited some of the powers of the Council, which was based on the Constitution of the First Republic of Afghanistan. According to his previous council, it had more limited powers.

(2)This constitution was approved on Hoot 5, 1355

The main features of the parliament provided in the Constitution of the First Republic were:

The Parliament of the Republic of Afghanistan is a one-chamber parliament during this period.

Fifty percent of the council members are peasants and workers. (Constitution of 1356, Article 49)

People choose their lawyers from the list proposed by the party (Constitution 1356, Article 49)

With the agreement of two thirds of the members of the National Assembly, a lawyer can be deprived of the power of attorney. (Constitution of 1356, Article 51)

Lawyers have parliamentary immunity. In normal cases, in addition to immunity from detention, they also have immunity from prosecution. (Constitution 1356, Article 54)

The Council has the power to impeach members of the government.

Meetings of the National Assembly are held in public and the decision of the Council is taken by a majority vote of the members present. (Constitution of 1356, Articles 55 and 56)

The National Assembly has the authority to enact laws during this period, but the drafting of these laws is prepared by the government and the judiciary, and the members of the council themselves are not authorized to pass laws. (Constitution of 1356, Article 62)

The approval of the budget, the confirmation of international agreements, and the sending of units of the armed forces abroad are among the powers of the National Assembly during this period. (Constitution of 1356, Article 62)

The council can be dissolved by the president. (Constitution of 1356, Article 78, Item 6)

The council does not have the authority to appoint ministers and other high-ranking members of the system, and this is one of the special duties of the president. (Constitution of 1356, Article 78, Articles 11, 12, 13 and 14)

As a result, the law authorizes people's representatives to perform their duties as representatives of the people, such as passing legislation, approving treaties, approving budgets, and deciding to send Afghan troops abroad. These are features that every parliamentarian needs to have such responsibilities.

The National Assembly, envisaged in the Constitution of 1355, has a weaker position than other institutions in terms of international standards and even in relation to its predecessor. It has fewer competencies and tasks. According to this constitution, the people are not free to choose their own representatives, and they have to choose from the list of parties, and the president has the authority to dissolve the National Assembly. Another point is that the council has no role in appointing high-ranking members of the government and can only impeach ministers, which can be considered a very basic issue in the world's democracies, where people have a role to play in determining high-ranking officials.

Unfortunately, on the basis of this constitution, the parliament was never formed due to various factors. (Payesh, 1368: 19)

XI. COUNCIL DURING THE DEMOCRATIC PARTY:

From the constitutional point of view, the rule of the People's Democratic Party of Afghanistan can be divided into three parts, each of which has its own characteristics. After the coup of 1357, which ended the First Republic, and Democratic Republic of Afghanistan came to power, until 1359, the country did not have a written constitution that was the product of the work of the ruling party.

In 1359, the basic principles of the Democratic Republic of Afghanistan were introduced in order to eliminate the existing gap and to systematize the system based on its desired principles. This constitution was continued until 1366, when a new constitution came into force under the name of the Constitution of the Republic of Afghanistan. Until in 1369 and after three years, it was reviewed and modified.

In the following two separate sections, we will discuss separately the provisions of Parliament, as set out in the two constitutions of 1359 and 1369, in order to clarify what changes and developments have taken place in the field and whether the Council governed by the Democratic Party of Afghanistan has the necessary authority to indicate democracy or not?

XII. COUNCIL DURING THE RULE OF THE CONSTITUTION OF 1359 "FUNDAMENTAL PRINCIPLES OF THE DEMOCRATIC REPUBLIC OF AFGHANISTAN:

Parliament in the period of the rule of the constitution in 1359, the method of which is nondemocratic, which after the Loya Jirga (Grand National Assembly) is considered the highest body with state power, which has several powers and duties. The Council sees two major differences during this period: first, the undemocratic approach to electing its members, and second, the increase in the powers of this body, referred to in the Constitution as the Revolutionary Council of the Democratic Republic of Afghanistan.

Due to the greater clarity about the structure and competencies of this council, the following is a detailed statement to provide a better understanding of them:

Parliament is one-chambered during this period.

The election of new members of the Revolutionary Council is made by the Revolutionary Council with the suggestion of the Board of Directors. (Constitution of 1359, Article 36, Item 2)

XIII. The approval of the decrees of economic, social and development laws and programs is one of the competencies of this council. (Constitution of 1359, Article 37, Paragraphs 1 and 2) The announcement of the referendum and the announcement of the Loya Jirga elections, the declaration of war and separation are among the powers of the council. (Constitution of 1359, Article 37, Articles 7, 8 and 9) Approval and cancellation of international agreements. (Constitution of 1359, Article 37, Paragraph 10) Permission to issue money and formation of special commissions is one of the duties assigned to the Revolutionary Council in accordance with this constitution. (Constitution of 1359, Article 37, Articles 11 and 12) All the powers of the Revolutionary Council shall be transferred to the Board of Directors during this period. (Constitution of 1359, Article 44) Considering the articles in this constitution, it can be concluded that the council is considered to be one of the most undemocratic councils in the history of the country's parliament due to the way its members are elected. The council is not elected by direct popular vote, but by special mechanisms. In this law, the Loya Jirga (Grand Assembly) is directly elected by the people and is considered the highest authority of the system of power, but it was not formed in practice (Rasooli, 1368:110) And in its absence, the Revolutionary Council was considered the highest authority of the system and enjoys the many powers mentioned above. From the point of view of separation of powers, the Revolutionary Council has a higher power than other powers and has the authority to appoint high-ranking officials of the other two powers. Which is the highest power among other powers.

Council during rule of Constitution of 1366 and amendment of 1369(Constitution of Afghanistan Republic)

With the inauguration of Dr. Najib as the last president during the Democratic Party's rule, efforts began to bring about reforms in various areas, and the government's relationship with the citizens was restored and people's satisfaction was improving. The amendment of the constitution and the granting of citizenship rights to the citizens of the country was more than before. With this approach, the new constitution was created due to the reform of the system in 1366, but it did not last more than three years, and with the recognition of this necessity, it was revised and amended in 1369. This constitution has its strengths and weaknesses, but it has features that make it more prominent than other constitutions after the monarchy. One of the positive features of this constitution is the election of all members of the House of Representatives (Wolesi Jirga) by direct popular vote through free and secret elections, (Payesh, 1368 :20) and the granting of key powers in important government decisions to this council. A major weakness of the constitution is that the parliament has the power to grant the permission to a president to dissolve the Wolesi Jirga and the president is able to do so under certain conditions. (Payesh, 1368: 24) In order to be more clear about the competencies, structure and activities of the parliament in the 1369 constitution, considering this constitution, we will examine the cases on a case-by-case basis in order to better understand its content and make it possible to compare it with other previous and subsequent laws. The highlights of the Constitution of the Republic of Afghanistan in 1369 on the qualifications and how it was formed are listed below: According to this constitution, the council has two chambers, which are the Wolesi Jirga (House of Representatives) and the Senate. (Constitution of 1369, Article 78) All members of the Wolesi Jirga are elected by direct, free, general, equal and secret vote, while the election of members of the Senate is determined by three channels. Each council elects two members and another third by the president. (Constitution of 1369, Article 79) The National Assembly (both parliaments) has the authority to pass, amend and repeal laws and decrees, as well as to interpret laws. (Constitution of 1369, Article 81, Paragraphs 1 and 2) Concluding and terminating bilateral treaties and joining and withdrawing from international treaties. (Constitution of 1369, Article 81, Paragraph 3) Approval of the state budget and review of the report on its implementation. (Constitution of 1369, Article 81, Paragraph 5) Establishment and modification of new administrative units, as well as the establishment and abolition of ministries. (Constitution of 1369, Article 81, Paragraphs 6 and 7) Deciding on the appointment and dismissal of vice presidents based on the introduction and demand of the president. (Constitution of 1369, Article 81, paragraph 8) -Confirmation of relations with other states and international organizations. (Constitution of 1369, Article 81, paragraph 11) In addition to the above-mentioned powers, which included the powers of the National Assembly, the Wolesi Jirga (House of Representatives) has special powers that need to be addressed. Deciding on granting a vote of confidence or taking away trust from the Council of Ministers (government) or one of its members. (Constitution of 1369, Article 82, paragraph 1) Adopting a final decision on the plan of economic and social development plans as well as the state budget in case of disagreement between the House of Representatives (Wolesi Jirga) and the Senate. (Constitution of 1369, Article 82, Paragraph 2)

Members of the National Assembly enjoy parliamentary immunity in order to carry out their assigned duties. (Constitution of 1369, Article 93, Paragraph 3)

The President can dissolve the House of Representatives (Wolesi Jirga) and the National Assembly by citing good reasons after consultation with high-ranking officials. (Constitution of 1369, Article 1, paragraph 97)

Considering the mentioned seasons, it can be seen that this council is different from its previous councils. Especially in this law, one can see positive points in relation to the constitutional laws of the post-monarchical republics, and from this point of view, the establishment of this law can be considered a positive development in the development of legislation in the field of constitution, although this constitution contains positive points compared to its previous three laws, it cannot meet the needs of a democratic society, and there are weaknesses in it, the most important of which is the granting of powers to the president to dissolve the National Assembly.

XIV. NATIONAL ASSEMBLY IN THE CONSTITUTION OF 1382 "CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN"

The 1369 constitution did not last long, and after a year of its rule, the communist regime in Afghanistan was overthrown by Jihadist groups and replaced by another regime. Afghanistan has been experiencing a lack of parliaments for about a decade, starting in 1371 and continuing until 1382. During this period, the Islamic Republic of Afghanistan announced the constitution of 1343 by deleting the chapter on the King as the constitution of the government until the adoption of the new constitution. It is not felt to be repeated.

With the capture of Kabul by the Taliban in 1376, virtually no constitution or parliament was established in the country, and Afghanistan was suffering from a severe lack of democracy, which has no place in our debate, What is relevant to our discussion is that during this period there was neither a constitution nor a parliament, nor was there an attempt to create it.

In 1382, a new constitution was introduced in Afghanistan, which was modeled from previous laws in various sections, and in many places, innovations were observed. At a glance, it can be said that this constitution is more democratic in various areas, especially in the parliamentary debate, which is our area of discussion, compared to the previous constitutions, and the manifestations of democracy can be easily seen in it.

In order to have a better understanding of this constitution, we need to discuss the main features of it regarding the structure and competencies of the National Assembly. In order to better understand the National Assembly in this constitution, we need to understand the differences with the previous parliaments, and in addition, to know its competencies and duties correctly and to determine its relationship with other powers, it is necessary to understand the functions and obstacles facing the National Assembly.

The main points about the National Assembly in the Constitution of the Islamic Republic of Afghanistan are as follows:

According to this constitution, the National Assembly has two chambers, each with its own specific name, the House of Representatives (Wolesi Jirga) and the Senate (Meshrano Jirga) (Constitution 1382, Article 82, and Paragraph 1).

Members of the Wolesi Jirga (House of Representatives) are all elected through free, direct, public and secret elections (Niaz, 1393: 335-336), but members of the Meshrano Jirga (Senate) are not elected in this way. Rather, each one-third is determined in a specific way. One third by Provincial councils, onethird by district councils and one-third by the president, according to it, the number of members of the

Meshrano Jirga is three times the number of provinces in Afghanistan.(Constitution of 1382, Article 83, Paragraphs 1 and 84)

Adoption, amendment or repeal of laws or legislative decrees are among the common competencies of the members of the National Assembly. (Constitution of 1382, Article 90, Paragraph 1)

Approval of the state budget and permission to obtain or grant a loan. (Constitution of 1382, Article 90, Paragraph 3)

Establishment, adjustment or abolition of administrative units. (Constitution of 1382, Article 90, Paragraph 4)

Acknowledging international treaties and terminating Afghanistan's accession to them. (Constitution of 1382, Article 90, Paragraph 5)

The Wolesi Jirga (House of Representatives) has the following special powers:

Deciding on the impeachment of any of the ministers in accordance with the law. (Constitution of 1382, Article 91, Paragraph)

Making decisions on development programs and national budgets. (Constitution of 1382, Article 91, paragraph 2)

Approval or rejection of awards in accordance with the provisions of the law. (Constitution of 1382, Article 91, paragraph 3)

In addition to the powers of the relevant chapter of the National Assembly, the National Assembly has other powers as specified in the chapter on the President. In the chapter on the President, some of the powers and duties of the President are subject to the approval of the National Assembly, which reflects the influence of the people's institution on the first person of the country and also strengthens the position of the National Assembly in the Afghan legal system.

Such cases can be considered as:

Determining the basic lines of the country's policy needs the approval of the National Assembly. (Constitution 1382, Article 64, Paragraph 2,)

Announcing war and withdrawal requires the approval of the National Assembly. (Constitution of 1382, Article 64, Paragraph 4)

The President may not send parts of the Armed Forces abroad except with the approval of the National Assembly (Constitution of 1382, Article 64, Paragraph 6)

It is necessary to have the approval of the National Assembly to declare a state of emergency and to end it. (Constitution of 1382, Article 64, Paragraph 8)

The appointment of members of the Supreme Court, ministers, the Attorney General, the Governor of the Central Bank, the Head of National Security and the Chief of Red Cross shall be approved by the National Assembly on behalf of the president. (Constitution of 1382, Article 64, Paragraphs 11 and 12)



With the death or resignation of the Vice President, the person nominated by the President must be approved by the Wolesi Jirga. (Constitution of 1382, Article 68)

One of the characteristics of a democratic system based on the rule of law is that no one is irresponsible and everyone is responsible and accountable to the law, the people and the people's institutions. This feature is clearly stated in the Afghan legal system, and even the highest person in the country cannot escape responsibility and must be held accountable. (Nyaz, 1393: 411) In discussing how the president is responsible, the authorities who are responsible for it, as well as how to handle the allegations against him and the role of the National Assembly in this process, it is important that it be addressed in a specific way. In this case, the focus will be more on the angle that shows the role and position of the National Assembly.

The main items are as follows:

The president is accountable to the nation and the Wolesi Jirga. (Constitution of 1382, Article 69, paragraph 1)

An accusation against the President for committing crimes against humanity, national treason/crime may be filed by one third of the total number of members of the Wolesi Jirga can be requested (Constitution 1382, Article 69, Paragraph 2)

If the indictment against the president is upheld by one-third of the members of the Wolesi Jirga (House of Representatives) and approved by two-thirds of the members, the Wolesi Jirga will convene the Loya Jirga within a month. (Constitution of 1382, Article 69, Paragraph 3)

If the accusations made by the Wolesi Jirga against the President are accepted by the Loya Jirga, the

President will be removed from office and the matter will be assigned to a special court. (Constitution 1382, Article 69, Paragraph 5)

In the President's Special Court, the National Assembly has a prominent role if the chairman of Meshrano Jirga and three members of the Wolesi Jirga constitute 4 members of the seven members of the Special Court. (Constitution 1382, Article 69, Paragraph 5)

According to the above-mentioned specifications and considering all the previous constitutional laws, it can be concluded that the parliament has a higher position in the period of the sovereignty of the constitution in 1382. In addition to other differences, the president's inability to dissolve parliament can be cited as one of the highlights that sets the constitution apart from other previous laws.

Despite having positive points in the formation of the parliament, this constitution has some shortcomings and deficiencies, which cannot be considered as representative of the people in the form of a fully democratic parliament that has arisen from the depths of the people's demands. For example, the president's appointment of a third of the members of the Meshrano Jirga (Senate) is one of the shortcomings of the constitution, which is inherited from the previous constitutions, and is considered a non-democratic practice as a weakness for the constitution.

XV. CONCLUSION

Parliament has experienced many ups and downs in Afghanistan over the past century. In this century, based on the country's constitutional laws, we come across parliaments that show a number of differences in terms of similarity to previous parliaments. The first parliament to be formed on the basis of Basic government regulations against Afghanistan was not a parliament in the true sense of the word, but an advisory council that consulted the government in specific areas. That parliament did not have the fundamental task of representing the will of the people, which was to legislate and oversee the functions of government, but it had a great political and legal importance as the cornerstone of the formation of parliament.

The Government's Basic Regulations against Afghanistan, a more complete parliament had envisioned a government-based constitution based on global standards. The parliament consisted of two houses, the House of Representatives were fully elected by the people and all members of the Senate were elected by the King himself. Although this parliament was considered a step forward according to State Council, it severely suffered from two serious problems and this was learning its democratization to be questioned. First, the appointment of all members of the Senate by the King himself without regard to the right of the people to vote; and second, the lack of parliamentary oversight and the inability of the parliament to reconsider the members of the government from the address of a public institution.

The Constitution of 1343, in terms of democracy, has advantages over its previous constitutions. In this constitution, the Wolesi Jirga has a higher role and position than the Meshrano Jirga, and it represents the will of the people. Adoption, amendment and repeal of laws, approval of decrees, approval of budgets, approval of international treaties, issuance of money, supervision of government actions, approval of ministers, parliamentary immunity and so on are prominent points that give this constitution high value and status. In addition to its advantages, this constitution has some gaps, some of which need to be mentioned. The first weakness of this council is that the king has the authority to dissolve the council and can lead all members, including the Wolesi Jirga, to the end of the mission. And the second weakness of this law is the appointment of one third of the members of the Meshrano Jirga by the Shah, which could affect the influence of the Shah over the legislature. In addition, the Shah's ability to appoint a member as chairman of the Meshrano Jirga could increase the problem of the Shah's influence and that of the upper house of parliament.

The constitution of the First Republic had given the people's representatives the authority to perform their duties as representatives of the people, such as passing laws, approving treaties, approving budgets, and deciding to send Afghan troops abroad, and other things that having such tasks is required to any parliament. In this period, the National Assembly has a weaker position than other powers in terms of previous parliaments, especially during the decade of democracy. According to the constitution, the people are not free to choose their own representatives and must choose from the party's list, and the president has the authority to dissolve the National Assembly. And the other point is that the council has no role in determining the high-ranking members of the government.

The parliament, which was formed on the basis of the 1359 constitution, is considered one of the most undemocratic councils in the history of the country's parliament due to the way its members are elected. The council is not elected by direct popular vote, but by special mechanisms. In this law, the Loya Jirga is directly elected by the people and is considered the highest authority of the system, but in practice it was not formed, and in its absence, the Revolutionary Council was considered the highest authority of the system and had many powers. The parliament, which was formed on the basis of the amended constitution of 1369, can have positive points in relation to the constitutional laws of the postmonarchical republics. And from this point of view, the establishment of this law can be considered a positive development in the improvement of legislation in the field of constitution.

Although this constitution contains positive points compared to its previous three laws, it did not meet the needs of a democratic society, and there were weaknesses, the most important of which was the granting of powers to the president to dissolve the National Assembly. Parliament has a higher status than all previous constitutions during the rule of law in 1382. In addition to other differences, the inability of the president to dissolve parliament can be considered as one of the highlights of this constitution from other previous laws. But the president's appointment of a third of the Meshrano Jirga members is one of the shortcomings of the constitution, which is inherited from previous constitutions and is seen as a non-democratic practice as a weakness for the constitution.

XVI. REFERENCES

BOOKS

- I. Payesh, Noorakbar, 1368 Senate, Kabul: Senate Publications of the National Assembly of the Republic of Afghanistan.
- I. Rasouli, Ashraf 1392 A Review of the Constitution of Afghanistan, Second Edition, Kabul: Saeed Publications
- II. Mohammadi, Abdolali 1395 Fundamental Rights of the Islamic Republic of Afghanistan, Second Edition, Kabul: Wazha Publications
- III. Mehrban, Abdullah (1369), History of the Council in Afghanistan, Kabul: Senate Publications of the National Assembly of the Republic of Afghanistan.
- IV. Niaz, Abdul Wahid 1393 An Introduction to the Constitutional Rights of the Islamic Republic of Afghanistan, First Edition, Kabul: Saeed Publications.

ARTICLES

- I. Terms and Conditions: The Basic Regulations of the Government against Afghanistan, adopted in 1303, Official Newspaper (Editorial Office of the High Council of Ministers) 14 Mizaan, 1203.
- II. The basic principles of the government against Afghanistan, approved in 1310, the official newspaper, (third edition, 3 Jaddy 311, Directorate of public press, Kabul press)
- III. The Constitution of Afghanistan, approved in 1343, official newspaper
- IV. The Constitution of Republic of Afghanistan, approved in 1355, Official Newspaper, 15 Hamal 1356, No. 360
- V. Basic Principles of the Democratic Republic of Afghanistan, approved in 1359, Official Newspaper, Sowr 1, 1359, No. 450.
- VI. Constitution of the Republic of Afghanistan, approved in 1366 and amended in 1369, Official Newspaper, Aqrab 15, 1369
- VII. The Constitution of the Islamic Republic of Afghanistan, approved in 1382, Official Newspaper,