

AUTHORITIES AND RESPONSIBILITIES OF THE PRESIDENT AGAINST THE LEGISLATIVE AND JUDICIARY; IN LIGHT OF THE (2004) CONSTITUTION OF AFGHANISTAN

Noor Anwar Farooqi¹, Ahmad Gul Wasiq², Dr. Abdul Hameed Seerat^{*3}

¹Assistant Professor, Department of Law, Faculty of Law and Political Science, Paktia University, Gardiz, Paktia / Al-Taqwa Higher Education Institute, Nangarhar, Jalalabad, Afghanistan

¹Professor, Civil Law Department, Law Faculty, Nangarhar University/ Al-Taqwa Institute of Higher Education, Jalalabad, Nangarhar, Afghanistan

^{*3}Lecturer, Law Department, Law and Political Science Faculty, Al-Taqwa institute of Higher Education, Jalalabad, Nangarhar, Afghanistan

¹nnooranwar8@gmail.com, ²ahmadgulwasiq583@gmail.com, ^{*3}abdulhameedseerat@gmail.com

Corresponding Author: *

Received: 10 August, 2023 **Revised:** 15 September, 2023 **Accepted:** 20 September, 2023 **Published:** 30 September, 2023

ABSTRACT

The Constitution of Afghanistan has specified the powers and responsibilities of the President in each part, one of which is the powers and responsibilities of the President against the legislative and the judiciary branches. According to the Constitution, the President is the head of all three branches of state. As the leader he has the responsibility to lead the country, recognized as the highest position and authority of the state, the powers are more than responsibilities. The President is accountable to the legislative and the judiciary branches in one case, which is also a criminal liability, not a political one. Also, according to the Constitution, the three powers are independent in their affairs and no person including the President, has the right to interfere in their affairs. In a country, these two powers are more important than any other powers. Because one makes the law and the other oversees the implementation of the law, these branches are active and operate within the framework of the law. Justice will certainly be done and when justice is done, human rights will be protected and crimes will be prevented. So, if we look at and study the situation in Afghanistan, we will conclude that in most cases the Presidents did not act under the Constitution. So that's the Constitution is the most authoritative law and national document of the country, it is the first responsibility of the President and the relevant authorities to respect the Constitution. Unfortunately, in Afghanistan, the law is being violated in the first place by lawmakers and law enforcers.

Keywords: Authorities, Responsibilities, president, Justice, Legislative, and Judiciary.

INTRODUCTION

Today, almost all countries in the world have made unprecedented progress in the political, military, cultural, economic, social, and other fields, which is unparalleled in the history of humanity. The biggest and basic reason for all these developments is a strong administration, better leadership, and honest and law-loyal leaders. Namely, leaders must understand the basic philosophy of authority and responsibility within the framework of the law and act by it, and when leaders are committed to the law,

so, the nation also remains committed to the law. For example: As Imam Muhammad Ghazali (may Allah have mercy on him) says: "When the leaders and scholars of a society are pure, then the society and the nation are also pure, and when the leaders and scholars are corrupt, then the society and the nation

are also corrupt.”¹ Likewise, Imam Malik (may Allah have mercy on him) says “The lower people are not reformed unless the upper people (officials) are reformed”. Therefore, if there is loyalty to the law in society, those societies live happily and luckily. When the Constitution was passed in the United States, the legislators and implementers of the Constitution declared to the nation this Constitution tolerates all for a century, so the result of tolerating and respecting the Constitution is that governs the whole world today.² Therefore, it can be said that the Constitution is a set of rules and regulations that defines and explains the nature of the regime, the structure of the state, and the privileges and obligations of the nation against the state.³ Thus, without a doubt, the Constitution is considered an important and valid law in a country (National guarantee), even though it is called the mother of laws and it covers all issues related to the country generally, from the president to the ordinary people all rights and privileges. Authorities and responsibilities are clearly stated in it so that the Constitution is the first and most authoritative national legal document in our country. For this reason, we consider it necessary to discuss the powers and responsibilities of the president against the legislative and judiciary branches within the framework of the Constitution. Because when these two institutions and the president fulfill their responsibilities and powers within the framework of the Constitution, many of the problems of our country shall certainly be solved and eliminated.

Statement Problems of The Study

There are many problems regarding the powers and responsibilities of the president in the Constitution, some of the most important ones are as follows: The balance between powers and responsibilities has not been taken into consideration, which means that the president's powers are greater than his responsibilities. In very few cases, he is responsible to the legislature and judiciary. The judicial process is also very closed and complicated and has many stages and processes. Therefore, the legislature and

the judiciary cannot easily deal with the accused cases against the president. This is the reason why the rulers of Afghanistan have not been prosecuted or punished in the long history.

Violation of the provisions of the constitution by the president in the name of expediency, that is, the constitution was often violated in the name of national expediency, while the conditions of expediency are clear: such as it will not be in contradiction with the law, it will eliminate harm and create benefit.⁴ But in fact, it is the greatest expedient to implement the provisions of the constitution. There is a famous proverb in Pashto, "Water turns gray from above," it means that if the president had carried out his activities within the framework of the constitution, then the many problems that the Afghan society is currently facing would have been prevented.

Significance of The Study

The constitution is the highest legal document of a country and a guide for setting other laws. The constitution defines the political principles, structure, hierarchy, position, and limits of the political power of a country's government, and determines and guarantees the rights of the country's citizens. No law should contradict the Constitution. In addition, the constitution considers themes such as the national flag, the national anthem, the national emblem, the country's capital, and the principles governing the country's economic policies, cultural programs, and foreign relations. The existence of the constitution is the basic condition for the recognition of a country. Without the constitution, the country cannot progress. The Constitution is considered a symbol of order and stability. The Constitution is such a reliable legal document that it defines the powers and responsibilities of the country's first-level person (the President) along with other important issues. So, if the president uses his powers and responsibilities within the framework of the constitution, then surely the misfortunes in that society will be prevented. The oldest national constitution still in force was written in 1600 and belongs to the Republic of San Marino in southern Europe.

¹ Christmann, Andreas. "Islamic scholar and religious leader: A portrait of Shaykh Muhammad Sa'id Ramadan al-Büti." *Islam and Christian-Muslim Relations* 9.2 (1998): 149-169.

² Orgad, Liav. "The preamble in constitutional interpretation." *International Journal of Constitutional Law* 8.4 (2010): 714-738.

³ Qasemzadeh. "Fundamental Rights (Asasi Huquq)." *Ibn Sina Library of Iran*. Eighteenth edition (1925): 8.

⁴ Liow, Joseph Chin Yong. "Exigency or expediency? Contextualising political Islam and the PAS challenge in Malaysian politics." *Third World Quarterly* (2004): 359-372.

Questions of The Study

- (1): What is the scope and position of the president from the perspective of the Consitution in Afghanistan?
- (2): Which powers and responsibilities does the president of Afghanistan have before the judiciary and the legislature from the point of view of the constitution?
- (3): Which responsibilities and powers have been fulfilled by the President of Afghanistan within the framework of the constitution?

Objectives of The Study

- (1): To analyze the scope and position of the president from the perspective of the Consitution in Afghanistan.
- (2): To explain which powers and responsibilities the president of Afghanistan has before the judiciary and the legislature from the point of view of the constitution.
- (3): To discuss the responsibilities and powers that have been fulfilled by the President of Afghanistan within the framework of the constitution.

LITERATURE REVIEW

Authorities and responsibilities of the president against the judiciary and legislative are considered important topics in the legal system of Afghanistan, after the event of 9/11 core changes were brought in the legal system regarding democracy and its related issues.

Definitional issues on authority and responsibility.

Authority is the legal right to give a command, order, or instruction and compel subordinates to do a certain act. On the other hand, Responsibility is the outcome of authority. It entails the obligation of the subordinate, who has been assigned the duty by his superior. Authority and responsibility are the power of law to determine for officials. Therefore, it can be said that without law, there is no authority and responsibility. For example, the authority and responsibility of the president are identified by the Constitution.

The authority and responsibility of the president against the legislative and judiciary

Articles (64,69,94,117 and 129) of the Constitution of Afghanistan discussed the authorities and responsibilities of the president. Thus, the main resource of this study is the articles of the

Constitution. Based on the title of the study the researcher used the constitution as the first and main resource for this article. Although there are several books and articles about the constitution of Afghanistan that have been written by different experts. Some of them the researcher mentions here: (1) Jahid, A.W. (1397 AH). "A Brief Description of the Constitution of Afghanistan." Hamed Resalat Publications, Kabul, Afghanistan, Printed Press. (2) Omar Sail and Ahmadullah Masoud, (November/December 2018), Article of the Islamic Republic of Afghanistan Legal System and Research, Published. (3) Yousafi, R. (2009). Analysis of the Constitution with a Legal and Sharia Tamadon Shargh Publications, Kabul, Afghanistan. All these books and articles were written on the analysis of the constitution and they did not specifically discuss the powers and responsibilities of the president, especially in front of the legislature and judiciary. However, the researcher used these books and articles as complementary sub-resources and not as the source. As already mentioned the main resource for this research is the Constitution of (2004).

METHODOLOGY

This research is going to be based on theories. The research method is descriptive, explanatory, and analytical. This research is going to analyze logically the authorities and responsibilities of the president before the judiciary and legislative in the constitution of Afghanistan. The provisions of the president's authorities and duties against the mentioned branches have been discussed by the Constitution, books, articles, reports, and online sources. This research is based on a library study.

The main discussion in this research is on the authorities and responsibilities of the president against the judiciary and legislative under the (2004) constitution of Afghanistan. How does the president operate and where his activities are limited? And which activities are considered crimes? Furthermore, the link between the president and legislative and judiciary has been explained. Whether or not a president was convicted of his criminal actions in Afghanistan. In addition to the above topics, the trial of the president has also been discussed in this study.

Definition of the President

The word "republic" is derived from the Latin word "Republica" and in English, it means "republic", which means group, community, and many people. A republic is defined in fundamental rights as a regime⁵ whose President is directly or indirectly elected by the people and whose presidency is limited and temporary. In politics and governance, a republic is a system that works for the sound management of society and the arrangement of state affairs. The President is the person who is elected through the election and is in charge of affairs.⁶ The term the President refers to a person who is a senior member of the executive branch whose tenure varies from country to country according to the Constitution.⁷

President from The Perspective Of The Constitution Of Afghanistan

The third chapter of the Constitution of Afghanistan, which has eleven articles, is reserved for the President. In this chapter, various topics are discussed about the president.⁸ Like (1) Conditions of candidacy for the presidency. (2) Conditions of the Presidential election. (3) Swearing ceremony. (4) Duties, responsibilities, and powers of the President. (5) Powers of Vice Presidents. (6) The end of the term of the President. (7) The responsibility of the President against the people and the Wolesi Jirga (House of People). (8) Salary and privileges of the President. All these issues have been examined in the Constitution.⁹

However, the subject of the discussion is the powers and responsibilities of the President against the legislative and the judiciary. Therefore, the

researcher will only discuss the main topic and ignore other issues related to the President.

According to Article 60 of the Constitution, "The President shall be the head of state of the Islamic Republic of Afghanistan, executing his authorities in the executive, legislative and judiciary fields by the provisions of this Constitution."¹⁰ The President is directly elected by the people in the presidential¹¹ and semi-presidential systems and also has extensive authority. Therefore, it is clear from this Article that the President of Afghanistan has extensive powers to exercise these powers in three branches (executive, legislative, and judicial) by the Constitution. From these three forces, the researcher discusses only the powers and responsibilities of the President against the legislative and the judiciary, not against the executive.

Authorities of The President Against The Legislative

The President has the powers of the head of state in all three branches of state, one of which is the legislative. The president has particular authority against the National Assembly. But before the author discusses the President's powers against the legislative first of all, it is necessary to briefly discuss the structure and identification of the legislative in Afghanistan.

Based on the Afghan Constitution, the National Assembly consists of two Houses. (1): House of People (Wolesi Jirga) with 250 seats. (2): House of Elders (Meshrano Jirga) with 102 seats.¹² "Members of the House of People shall be elected by the people through free, general, secret, and direct balloting."¹³ However the selection of members of Meshrano

⁵. Regime is a French term that derived from the Latin word regimen, which refers to the act of directing, as well as the regime is counted the method of the government leading. Baker, S. (1996). "Introduction to the Encyclopedia of Social Sciences." Kayhan Publications, Volume 2. 674.

and the term refers to the act of leading a government or a set of political institutions, that is, a collection of political institutions within the territory of a state at a given time. See, Qazi, A. (2004). Fundamental Rights and Political Institutions (huquq Asasi Wa Nihad Hai saisi). Mizan Publishing, 11th edition, Tehran. 283_284.

⁶. Dictionary of Moeen .

⁷. Talebi, F.A. (2006). "Administrative affairs (Jamie Amur Adari)." Publisher: Sabz Saei Technical Institute, Tehran Iran. 151.

⁸. Ibid, 151.

⁹. Karimi, M. Ghorbani.S. (2008). "Familiarity with administrative and office affairs." (Ashynai Ba Amur Adari Wa Daftari). Supervised by Razhanhan, F. Edited by Panahi, Z. Karimi, F. Published by Ataryas. 391.

¹⁰ Article 60, "The Constitution of Islamic Republic of Afghanistan," Ministry of Justice. Official Gazette, ISSUE NO:(818). 2004.

¹¹. It is a system in which there is a complete separation of powers And no one of the powers interferes in the territory and precinct of the other Rather, Harry's strong duties and affairs are separate from each other, these forces are equally present against each other. No force has superiority over another. Shinwari, B. (2016). "Basic Law and Public Principles." Published by Muslim press society, Jalalabad, Afghanistan. 138.

¹². Sail, O. And Masoud, A. Article of Islamic Republic of Afghanistan Legal System and Research, Published November/December 2018, p 5.

¹³Ibid, Article 83, "The Constitution of Islamic Republic of Afghanistan."

Jirga is unlike Wolesi Jirga. Members of the House of Elders shall be elected and appointed as follows: 1. "From amongst each provincial council member, one individual shall be elected by the respective council for a four-year term;" 2. "From amongst district councils of each province, one individual, elected by the respective councils, for a three-year term;" 3. "The remaining one-third of the members shall be appointed by the President, for a five-year term, from amongst experts and experienced personalities, including two members from amongst the impaired and handicapped, as well as two from nomads."¹⁴

Of course, the one-third part is appointive selection¹⁵ Article (85) of the Constitution stipulates the age of the members of the National Assembly. "Shall have completed twenty-five years of age on candidacy day for the House of People, and thirty-five years on candidacy day or appointment for the House of Elders".¹⁶ It was said about the powers of both rooms of the legislature, the authority of Wolesi Jirga is more powerful than the Meshrano Jirga According to Article (91) of the Constitution, the powers of Wolesi Jirga is more than the Meshrano Jirga in the following three areas:

(1) "Decide about elucidation session from each Minister by Article (92) of this Constitution".(2) Decide on the development programs as well as the state budget; (3) Approve or reject appointments according to provisions of this Constitution.¹⁷ Article (82) of the Constitution order as this (No individual shall be a member of both houses at the same time). According to the Constitution of Afghanistan, a person cannot be a member of both the House of People and the Senate at the same time. The Election Law states that a person is not eligible to nominate for two seats unless a candidate wins more than one

seat in the election. So, in this case, it only deserves a seat or is considered successful.¹⁸

Based on the constitution, The powers of the President of Afghanistan against the legislative include (1) "Inauguration of the legislative branch and annual sessions of the National Assembly or joint sittings of both houses".¹⁹ (2) "Holding extraordinary sessions of the National Assembly on holidays".²⁰ (3) "Appointing one-third of the members of the Meshrano Jirga, (House of Elders)". "This means the remaining one-third of the members shall be appointed by the President, for a five-year term, from amongst experts and experienced personalities, including two members from amongst the impaired and handicapped, as well as two from nomads". "The President shall appoint fifty percent of these individuals from amongst women. The individual selected as a member of the House of Elders shall lose membership to the related Council, and, another individual shall be appointed per the provisions of the law".²¹

(4) "To present a draft law as the head of government". (5) "Criticism on the National Assembly drafts and its rejection within 15 days with the arguments".²² (6) "Endorsing of legislative decrees on urgent matters and during the recess of the Wolesi Jirga, but not on the budgetary matters". (7) "Endorsing laws approved by the National Assembly".²³

The President's Powers against the Judiciary

Before discussing the powers of the president in the judiciary, we must first talk briefly about the structure and identity of the judiciary in Afghanistan. The judiciary is the third most important part of the Afghan state whose duty is to enforce the rule of law and justice²⁴, so it can be said that the best laws and

make two things equal, to make one thing equal to another. Moreover, as it is said, (عدل امرّة عدلا ودالنا) he has done the thing right, (عدل في حكمه) or (عدل فلانا الى طريقه) guided a person to a right path, (عدل الميزان) to equal both sides of the scale. Ibrahim Mustafa, Ahmad Al-Zayat, Hamid Abdel-Qader, Muhammad Al-Khajar, Al-Mu'jam Al-Wasit, (المعجم الوسيط) the language association of Cairo. volume 2. P 588. Regarding the world justice (Adal), Almighty Allah mentions in the Holy Quran, [الْحَمْدُ لِلَّهِ الَّذِي خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ وَجَعَلَ الظُّلُمَاتِ وَالنُّورَ ثُمَّ الَّذِينَ كَفَرُوا بِرَبِّهِمْ يَعْلَمُونَ]. "Praise be to Allah, who has created the heavens and the earth and the darkness and the light, then those who disbelieve set up false gods with Allah". Surah Al-Annam, verse # 1. The legal definition of Justice (Adal) is to give the bona fide right to his owner or to identify solutions or legal provisions for criminal acts and make necessary decisions about them in accordance with the general principles of justice. Furthermore, Justice is defined as it is the process by which all

¹⁴ Ibid, Article 84.

¹⁵ The constitution of Afghanistan. Articles 83 and 84.

¹⁶ Id. Article 85.

¹⁷ Id. Articles 91. Clauses are 1, 2 and 3.

¹⁸ . Jahid, A.W. (1397 AH). "A Brief Description of the Basic Law of Afghanistan (Sharh Mukhtasar Br Qanoon Asasi Afghansiatn)." Hamed Resalat Publications, Kabul, Afghanistan, Printed Press. 172.

¹⁹ . Id. Article 64, clause 9 and another Article 104.

²⁰ Id. Article 107.

²¹ Id. Article 84.

²² Id. Article 94.

²³ Id. Article 64, clause 16 and another Article 95.

²⁴ Concept of Justice (Adal): Literally the world Justice (Adal) is derived from Arabic Language which means to correct, to order correctly, to turn in the right direction, to turn from a crooked to a straight position, to

judges are needed to ensure justice and people's rights in a society. According to the Afghan Constitution, the head of the Supreme Court and his members determine in a mixed manner, which means this system is proposed by the president and approved by the lower house. This system protects the judges from political considerations. Article 117 of the Constitution dictates as below.

“The Supreme Court shall be comprised of nine members, appointed by the President and with the endorsement of the House of People, and in observance of the provisions of clause three of Article Fifty as well as Article One Hundred Eighteen of this Constitution, shall be initially appointed in the following manner”.²⁵

“Three members for four years, three members for seven years, and three members for ten years. Later appointments shall be for ten years. Appointment of members for a second term shall not be permitted.”²⁶

“The President shall appoint one of its members as Chief Justice of the Supreme Court.” “Members of the Supreme Court, except under circumstances stated in Article One Hundred Twenty-Seven of this Constitution, shall not be dismissed until the end of their term.”²⁷

According to the Constitution of Afghanistan, the judiciary branch is an independent and sovereign pillar of the Islamic Republic of Afghanistan, its main function is to enforce justice and give their rights to the rightful owner. The judiciary branch has a direct relationship with the law. That can make a fair decision based on a correct understanding of the law and per the provisions of the law, and on the other hand, are the guard right and justice. Therefore, the Constitution considers the judiciary branch as a special organ in the state. It has a special place in the Constitution, which means, it has a special chapter.²⁸

Without a doubt, the President has special powers as the head of state against the judiciary branch. It can be explained as follows.

(1) “Appointment of the Chief Justice and members of the Supreme Court with the approval of the Wolesi Jirga.”²⁹ In addition, “Judges are appointed at the proposal of the Supreme Court and approval of the President”. (2) Members of the Supreme Court shall take the following oath of office in the presence of the President:

“In the name of Allah, Most Gracious, Most Merciful, I swear in the name of Allah Almighty to attain justice and righteousness per tenets of the Holy religion of Islam, provisions of this Constitution as well as other laws of Afghanistan, and to execute the judicial duty with utmost honesty, righteousness, and impartiality”.³⁰ (3) “Appointing, retiring and accepting the resignation and dismissal of judges, officers of the armed forces, police, national security as well as high-ranking officials according to the provisions of law”.³¹ (4) “Reduce and pardon penalties per the provisions of the law”.³² (5) “According to the Constitution, the approval of the death penalty, after the final decision of the court, is the power of the president only in the judiciary branch”.³³

Responsibilities of the President

As already indicated, the responsibilities of the president in the constitution are less than the authorities. Because the position of the president in the constitution of Afghanistan is such that he is not responsible to anybody and is not accountable to the institution, meaning that he has no political responsibility, no one can impeach or remove him and no one can dismiss him except under the Constitution. But only Article 69 of the Constitution has mentioned the trial of the President, even though that is a criminal liability³⁴, not a political liability.

civil, commercial, and criminal lawsuits are examined by designated government bodies in accordance with the laws and regulations and in accordance with the executive powers enshrined in applicable law. Faculty of Law and political sciences, Kabul University. Dictionary of Legal terms (د حقوقی اصطلاحاتو قاموس). 2008. P 174.

²⁵ Ibid, Article 117. The Constitution of Afghanistan.

²⁶ Ibid, Article 117, Clause 2.

²⁷ Ibid, Article 117, Clause 3.

²⁸ Yousafi, R. (2009). “Analysis of the Constitution with a Legal and Sharia Approach (Tahlil Qanoon Asasi Ba Riward Huquq Wa

Sharia),” First Edition, Tamadon Shargh Publications, Kabul, Afghanistan. 209.

²⁹ . Ibid. Article, 64. Clause 12.

³⁰ . Ibid. Article 119.

³¹ . Ibid. Article 64, clause 13 and Article 132.

³² . Ibid. Article 129.

³³ . Faghihi, A. (2008). “Proceedings of the Seminar on the Study of Administrative Issues of Iran (Majmuea Maqalat Seminar Barrasi Misael Adari).” Allameh Tabatabai University Press. 170.

³⁴ Criminal responsibility refers to a person who commits a crime in a situation where he has full and perfect will and authority and is fully aware of the consequences of the criminal act. Odeh A.Q (2005).

This means, that the Wolesi Jirga and judiciary branches cannot impeach him. Now, the researcher studies the role of the legislative and judiciary branches in the trial of the president as follows.

Responsibilities of the President Against The Legislative

Afghanistan's legal system is similar to the semi-presidential system, the original quotation from such systems is usually taken from the French legal system. In these systems, the president is the head of state and the head of government (executive branch), this means, the president is the head of all three branches, and as well as he has special own powers. But according to Article (69) of the Constitution, as before stated in the above-mentioned structure of the special court the Speaker of the Meshrano Jirga and three members of the Wolesi Jirga will also be present in this court, so, let's see the structure of the court. There are both Houses of the National Assembly. If there are also any parts of the jirgas here, they are addressing the criminal responsibilities of the president. Therefore, it should be said that the National Assembly cannot independently ask the president for clarification.

Responsibilities of The President Against The Judiciary

Based on the above explanation, the president is the head of state and has powerful authority in all three branches of state. But despite this power, the president still has some responsibilities against the three branches. One of these responsibilities is against the judiciary. Namely, the president is responsible to answer and give clarification to the specific court about the accused crimes. This is a criminal responsibility of the president that is created in some specific issues. However, only the Supreme Court does not have the right to seek clarification from the President regarding the imposition and non-imposition of criminal liability. It is commonly understood, that the constitution in Afghanistan has

in most cases victims of expediency.³⁵ No institution, including the president, is committed to the Constitution. When they break the provisions of the constitution, they say that it is expediency and we have done this based on expediency. While they do not understand the concept of expediency, because law enforcement is itself expedient, and breaking the law can never be expedient.

Condition of Impeachment of the President

The Constitution of Afghanistan specifies the circumstances of the trial of the president, which are clearly described under Article (69) of the Constitution: "The president shall be responsible to the nation as well as the House of People under the provisions of this Article". "Accusations of crimes against humanity, national treason as well as a crime against the president shall be demanded by one-third of all members of the House of People. If this demand is approved by two-thirds of the House of People, the House of People shall convene the Loya Jirga within one month."³⁶

" If the Loya Jirga, by a two-thirds majority, approves the accusation, the president shall be released from duty and the issue shall be referred to a special court, which shall be comprised of the president of the House of Elders, three members of the House of People, and three members of the Supreme Court appointed by the Loya Jirga. The case shall be presented by the individual appointed by the Loya Jirga. In such a situation the provisions of Article Sixty-Seven of this Constitution shall be applied".³⁷

ANALYSIS

In Article (69) of the Constitution, among the two important topics mentioned about the criminal liability of the President, first of all, the crimes are pointed out, due to which committing is referred to the criminal liability of the president. These crimes are divided into three parts (felony, misdemeanor and petty crimes).³⁸ Secondly, accusing the president of

"Islam Criminal legislation and the statutory laws (The Islam Jinayi Tashrih Aw Wadei Qawanin)." Translated by, Hedayat, A. H. Hedayat Paigham publication center, Kabul, Afghanistan. Volume 1. 360_361.

³⁵ Gaining profit and eliminating loss is called expediency. See Zidane, A.K (2017). "Al-Wages in the Principles of Jurisprudence (alwajiz fi

'usul alfiqh)." Third edition, Pashto translation, Hilal, F. A. Muslim Publication society, Jalalabad, Afghanistan. 218.

³⁶ Ibid. Article 69, Clause 1.

³⁷ Ibid. Article 69, Clause 2.

³⁸ Islamic Republic of Afghanistan, "Criminal Code," Ministry of Justice, Official Gazette, Issue NO: 1260, (May 15, 2017): Article 28.

committing a crime and dealing with the relevant case is discussed. Therefore, it can be said that this article has some legal and technical problems. In the penal code of Afghanistan, crimes are divided into three parts (felony, misdemeanor, and petty crimes): Therefore, the president is not responsible in the case of misdemeanor and petty crimes. While a misdemeanor is one of the relatively severe crimes. On the other hand, crimes against humanity and national treason are considered felonies. That is, national treason and crimes against humanity are among the types of felonies.

According to Article (69), the judicial process of the president is very complicated: This means that first, one-third of the members of the Wolesi Jirga will accuse the president of the mentioned crimes, then two-thirds of the members will support and approve this accusation, after that the Loya Jirga will be called in one month. The Loya Jirga will then approve this charge by two-thirds. After the approval of the Loya Jirga, the president is removed from office and the matter is referred to a special court: This process takes a long time and there is a possibility that various considerations arise during this time that the president may delay the trial process and ultimately the related case will be suspended.

Also, the composition of the special court is complicated and complex and includes such bodies that are directly under the influence of the president. That is, the election is directly related to the president. These four bodies are. The Wolesi Jirga, the Loya Jirga, the Senate, and the Supreme Court organs. Also, the professionalism of the members was not taken into account in the composition of the trial. In other words, only a part of the members of this organization are professional and they are the judges of the Supreme Court and the other three categories are mostly unprofessional people. While the situation and circumstances of the country should be taken into consideration during the formulation of the law, in the last twenty years (2001-2021), the Afghan House of People and the Upper House were managed by non-professionals and those persons who did not even have a bachelor's degree. Most of the members of the parliament were illiterate and could not even read and write. Also, the appointment of the Speaker of the Senate is directly the authority of the president, and whoever the president wants, he appoints him as the Speaker of the Senate.

Also, the authority to form the Loi Jirga was with the president, whoever the president liked would be invited to the Loi Jirga, that is, the composition of the members of the Loi Jirga was based on relationships and not by regulations.

Another thing is that the members of the Supreme Court are proposed by the president to the Wolesi Jirga for approval. In other words, the president plays an important role in the selection of members of the Supreme Court because the president introduces to the parliament for approval those who have a close relationship with the president. This situation has been observed in the governments of Hamid Karzai and Ashraf Ghani in the last 20 years. Therefore, it can be said that no one king or president has been prosecuted or tried in Afghanistan throughout history. The basic reason is that the constitutions of Afghanistan have been formulated and interfered with by leaders of the time. This is because each king and president have come to power, they have made and enacted the constitution at will. (13) Constitutions have been made in Afghanistan for almost a century.

CONCLUSION

At the end of this study, it is concluded that the powers and responsibilities of the president against the legislative and judiciary branches are defined under the Constitution of Afghanistan, and also the powers and responsibilities of the legislative and judiciary branches are defined by the Constitution. In a country these two powers are more important, according to the Constitution, the president is at the head and carries out important activities at the national level, if the legislative and the judiciary branches are active and the president is responsible for the Constitution and deal with them within the limits of Constitution it is certain that the justice will be safe to the fullest extent, and when justice is presented, human rights will be valued and no one's rights will be lost. But if these branches and those who are at the head of these branches do not carry out their activities according to the Constitution. So it is certain that human rights will lose their value and will be wasted like today.

There is no commitment to any law from high-ranking officials to the ordinary person, and when there is no commitment to the law, then there is no guarantee of the protection of human rights. Human

beings live in violence, like our countrymen, although the Constitution defines the special powers and responsibilities of the president, this Constitution, which is the most authoritative law and national document in the country, is the primary responsibility of the president, but with the passage of the new law, how many presidents (Karzai and Ghani) have been elected. So far they have not exercised their powers and responsibilities against the legislative and judiciary branches in the manner prescribed by Constitution. According to the Constitution, they could not exercise their powers and responsibilities, the main reasons for which are power-seeking, external interference, lack of expert advisers who are committed to the country, collusion, and personal gain. we hope that these problems are resolved in the future.

RECOMMENDATIONS

At the end of this study, the author would like to present his recommendations on the powers and responsibilities of the president against the judiciary and the legislative. hoping that these recommendations will be put into practice.

The President must first study the Constitution properly, recognize his authority and responsibility, and act under it. In matters of the legislative and judiciary branches, he must exercise his powers and responsibilities under the law.

2- To hand over affairs to the experts. This means, that power should be transferred to the people who have specialization and commitment in the specific field, especially in the judiciary branch, it should be done by people who are Islamic and committed to the constitution of the country, to provide the right services to the nation on time, i.e., professionally.

3- Commitment to the principle of justice, non-interference in the affairs of the legislative and judiciary branches, serious and decisive fight against corruption, and what they are now fighting is symbolic. Nothing can be seen in practice.

4- As the President is the head of all branches, it is important that he should lead these branches in an orderly manner and prevent the despotism of these branches.

5- Currently, the Islamic Emirate is in power in Afghanistan, but it does not have a constitution for governance. Therefore, it is recommended to enact a constitution that will represent the interests of all

Afghans in a good way. Also, consider the balance of powers and responsibilities of the first-level government officials.

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