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Examining Legislative Oversight mechanisms in Afghanistan Legal System: The Manifestation of the Rule of Law

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Abstract

The presence of regulatory mechanisms is required for the rule of law to prevent government officials and its agencies from abusing their legal authority as well as to compensate citizens for societal harms. Due to the executive's dominance over the legislative branch in Afghanistan's constitution and legal system, institutional, political, discretionary, informational, and financial regulatory mechanisms were unable to effectively carry out their legal obligations, thus violating the separation of powers, resulting in serious issues. Regulations cannot be used to prevent abuses by government officials as long as the separation of powers concept does not function in its genuine form.

Keywords: Rule of Law, Institutional Supervision, Political Supervision, Discretionary Supervision, Informed Supervision.

Introduction

Regularizing interactions between individuals and the government within the confines of a legal system is one of the defining characteristics of the rule of law. Public authority is only used in this type of governance in accordance with the rules established by the law and the legal system. According to this point of view, using power turns it into using a legal authority that is regulated by the law. History demonstrates that just defining an area of jurisdiction works to constrain rulers' behavior. It is insufficient and compliance is required. Furthermore, the authority or other body should control the limits of authority and legal rules that define the competence of each official and public body, and the performance of that authority or other body should be continuously evaluated to ensure that they do not take legal action and do not exceed the permitted limits. Therefore, by analyzing the concept of supervision, it follows the establishment of a system of checks and

balances which seems to be a necessary and inevitable issue for the rule of law and the establishment of a law-abiding government. The rule of law necessitates the establishment of regulatory systems to avoid abuse of legal authorities by government officials and organizations, as well as to recompense individuals for any harms. Afghanistan's constitution recognizes the principle of separation of powers as an aspect of the rule of law by determining the position and competence of the three powers and the mechanism of their supervision over each other (for example, paragraph 2 of Article 77 with the possibility of judicial review of laws relating to ministerial responsibility before the House of Representatives, Article 121). Article 50, second paragraph, of the Constitution requires the government to carry out its decisions within the framework of the law. In order to guarantee effective rule of law in Afghanistan, three forms of oversight may be considered: legislative, administrative, and judiciary. The author's major question in the preceding research is whether or not there is legal oversight in the constitutional law system. What, if any, products are included and are these items understood in their actual context? A constitutional law system appears to envision legislative processes such as political, informational, discretionary, and budgetary supervision, but it confronts basic obstacles due to the executive branch's superiority over the legislative branch. The approach that may be employed in this research is analytical-descriptive, and the method of data collection is library-based.

The House of Representatives' Special Supervisory Functions

The oversight mechanism is one of the elements of the formal rule of law (Falsafi, 1393: 24). A necessary and unavoidable requirement is parliamentary oversight, combined with judicial and administrative oversight (Seyd Fatemi, 2003: 7). The rule of law concept opposes the arbitrary actions of government authorities (Georgian, 1387: 160). The rule of law in Afghanistan consists of five main indicators: the independence of the institutions of the rule of law, fair and universal laws, supervisory mechanisms, uniform and non-discriminatory implementation and compatibility with the principles of human rights (Afghanistan Human Development Report, 2077: 7). Parliament is a political institution that represents the sovereignty of the people (Amir Arjamand, 2003: 87). Afghanistan's legal system is bicameral, consisting of the House of Representatives (Walisi Jirga) and the Senate (Mishranu Jirga), which form the National Council.

According to Articles 68 and 127, the National Council is also in charge of oversight and, in certain circumstances, political judgment, which demonstrates the relative flexibility and separation of powers in Afghanistan. The National Council is also specifically tasked with passing laws (Mushtaghi, 1388: 182-193).

The cornerstones of parliamentary supervision under Afghanistan's constitutional law system are: Parliamentary confidence votes for ministers, financial oversight, parliamentary investigations, ratification of international treaties, and judicial oversight (Ahmadi and Sadaqat, 1388: pp. 275-284). The following powers are granted to the parliament by the constitution for the purpose of monitoring the executive branch: monitoring based on the authority to legislate and ratify international treaties (paragraphs 1 and 2 of Articles 90 and 94); monitoring based on the authority to approve the budget (paragraph 2 of Articles 91 and 98); monitoring based on the authority to look into and study government actions through the creation of a special commission (Article 89); monitoring based on the authority to study and investigate. Essentially, parliamentary oversight in Afghanistan may occur both during and after an operation (Dehghan, 1386: 369). Naturally, it should be highlighted that monitoring should be done both during and after the completion of

actions that have several components (Rasakh, 1388: 16). If not, monitoring needs to be carried out following the procedure (Mansour Nezhad1383: 217; Mehrpur 1378: 217). Below, we'll look at each one separately.

First - Institutional supervision

The main manifestations of institutional supervision can be seen when the House of Representatives votes on each of the proposed ministers, the cabinet and the government's programs as a whole. Monitoring the selection of ministers and other government employees is a sort of institutional monitoring that the parliament applies to the executive branch at the outset of the formation of the government and before any executive activity (Tabatabaei, 1385: 164). The legislature reviews the ministers suggested by the president's credentials for the ministry or the executive and governmental activities in this area, including their educational, technical, experimental, managerial, and other backgrounds (Hashmi, 1380: 2, 193-199). According to clauses 11 and 12 of Article 64 of the Constitution, the appointment of ministers and some other government officials must be approved by the House of Representatives. Based on the principles of the House of Representatives' internal duties: "The representative of the government in parliamentary affairs officially entrusts the formation of the cabinet to the administrative board of the Wolesi Jirga in accordance with the second paragraph of Article 71 of the Constitution. The Wolesi Jirga approves the number of ministers and their powers and duties." The ministers and government representatives specified in Article 64, paragraphs 11 and 12, of the Constitution come before the House of Representatives and lay out their work schedule. The vote is then done manually and directly in their absence. In the event that the nominee is unable to win a majority vote, the president proposes a replacement (Danish, 1391: 667). In actual fact, this order is problematic, particularly when there is some sort of conflict between the government and the parliament. In these instances, the president takes advantage of the circumstance and names the same ministerial candidates who were previously rejected as acting ministers. As long as we have observed, this condition may persist (Rasouli, 1390: p. 277).

Second: Information Monitoring

Another sort of monitoring specified in the constitution is information monitoring. Information monitoring is one of the legislative power's monitoring methods on the executive, through which the interchange of information via the House of Representatives leads people's representatives to guarantee the nation's rights, national interests and regulation of government acts. In accordance with Article 89 of the Constitution, the House of Representatives has the authority to create a special inquiry committee in order to keep an eye on how government officials and institutions are operating. No government institution has the right to refuse to assist with this special commission's investigation into and examination of the institutions of the executive branch. The House of Representatives has the right to review any performance they deem essential, as well as any potential violations and supporting evidence, in order to address any violations that may have occurred. (Principles of internal duties of Wolesi Jirga, articles 34-36). The question is a good starting point for developing a meaningful and fruitful discussion between the National Council and the administration in the next step and aids in the establishment of the rule of law. Impeachment is distinct from questioning. In certain nations, one or two MPs jointly raise a question, and the members of the government respond. This is a two-way discussion. The discussion in this scenario is not public, and the legislators are typically not involved, yet impeachment is a public matter

(Article 66 of the Constitution). According to the Afghan Constitution, one of the responsibilities of the commissions of each of the two National Councils is to interrogate the ministers. Therefore, the delegates are unable to ask each minister questions individually. Ministers may respond orally or in writing (Tabatabai, 1373: 142). The query serves as a wake-up call for the concerned minister to improve how he handled the situation. If not, the minister could later be impeached and dismissed. It will be time for the vote of no confidence if the commission determines that the explanations given are not supported by adequate and valid justifications (Article 99 of the Constitution of Afghanistan).

Third - Political Supervision

Political supervision is the ongoing oversight of the conduct of executive branch officials who have political accountability and against whom the parliament has the authority to bring an impeachment proceeding that might result in their expulsion. The principle of political responsibility is more aimed at nations with parliamentary systems, where the legislative branch continuously oversees the executive branch's operations and keeps track of its internal and external policies from the time of its formation through to its completion. If the legislature approves the government's policy, government ministers stay in their positions; nevertheless, if the legislature as a whole disapproves of the policy, the manager or the relevant ministers may be impeached and forced to resign (Hashmi, 1380: 2, 208)

Ministers under Afghanistan's constitutional law system are politically accountable to the House of Representatives. This obligation comes with a performance warranty. The political accountability of ministers before the House of Representatives is provided for in Article 92 of this Constitution, with a strong executive assurance of impeachment and, ultimately, removal. The unique aspect of the affairs is that the performance of the relevant minister will be examined in the first stage upon the recommendation of 20% of the House of Representatives. This suggestion is made to the parliament's speaker, and the head of the Committee places it on the agenda. If the parliament approves this plan, the special commission carries out the minister's directives. In this manner, the aforementioned minister attends the special commission meeting and justifies his activities (Danish, 1391: 673). In accordance with paragraphs 42 to 45 of the House of Representatives' internal duty principles, if the commission is unsatisfied with the minister's responses, the commission will draft a report on the vote of no confidence in the minister (Rasouli, 1390: 303). The minister appears in the House of Representatives' general meeting. After speakers defended and criticized the performance of the minister, voting is conducted. If the majority of the members of the House of Representatives vote to remove the aforementioned minister from office, the president must appoint a new minister. Provide a new one to the legislature for that ministry (Danish, 1390: 301). The important thing to notice is that the Wolesi Jirga (House of Representatives) members must vote unanimously in favor of the motion for no confidence in order for it to pass. The rule of law will be compromised if the legislature's powers to apply impeachment are aligned with party, ethnic, racial, and religious interests and go against how the minister's legal obligations should be carried out. Because many members of the Afghan House of Representatives have no experience in parliament and have low academic and managerial levels, we have seen examples of impeachment being used to confront the executive branch and this legal tool rather than strengthening the rule of law. The inverse has been used (Dehghan, 1386: 369-386).

Fourth - Discretionary Supervision

The political supervisory authority's method of policing the decisions and activities of people under its watch is known as discretionary supervision. Without parliamentary oversight, the executive branch implements the applicable laws on its own political initiative and under the direction of the legislature. In this case, the political accountability of the relevant officials and ministers is increased if the majority of parliamentarians disapprove of the political acts of the government without interfering with the executive process. Due to the sensitivity of the situation and to safeguard the interests of the community, the parliament is under stringent control over certain of the government's acts. This indicates that only with the previous consent and authority of the parliament, which is referred to as discretionary and prior supervision, may the aforementioned acts be carried out (Article 92 of the Constitution of Afghanistan).

The monitoring of international treaties and agreements is one of the things that cannot be done or completed without the National Council's consent (Article 90's Paragraph 5). Even though the government representative has signed it and the stages of its conclusion have been completed, the intended legal effects will not be derived from these treaties and covenants until they are ratified. Therefore, it is crucial for national sovereignty to monitor the treaties and their ratification.

It is the responsibility of the President to declare a state of emergency in cases of war, danger, unrest, natural catastrophes, and similar situations with the National Council's consent. If this condition persists for more than two months, the National Council will need to approve it once again (Art. 133) Military rule is not recognized under Afghanistan's legal system; instead, the president's proclamation of a state of emergency to manage the crisis situation is acknowledged. Due to the limitations on people's freedom placed by the emergency state, the establishment of this state must be approved by the parliament and supervised by the people's representatives in order to prevent the violation of citizens' rights under the guise of an emergency. Declaring war is one of the president's responsibilities and authority. Furthermore, any decision made in this area without the National Council's consent is void. Declaring war and armistice with the National Council's consent is acknowledged as one of the President's responsibilities in Clause 4 of Article 64 of the Constitution. The National Council must provide its consent before the President may transfer a portion of the military troops outside the country. This is another matter of discretionary oversight. Article 79 of the Constitution States with the exception of issues pertaining to the budget and financial affairs, the executive branch may issue a legislative decree while the House of Representatives is adjourned or in an emergency. Within thirty days after the date of the National Council's first session, the legislative decree must be submitted to that body. It will not be valid if the National Council rejects it. According to Article 90, paragraph 1, of the Constitution, "Approving, amending and canceling laws or legislative decrees" is one of the National Council's powers.

Fifth - Financial Supervision

Commercial operations, such as the negotiation and implementation of commercial contracts, the implementation of building and service projects, and even a simple decision by the executive body to adjust human resources, entail financial and economic results. A significant portion of the public sector's discretionary powers are used to make the aforementioned judgments and take the aforementioned actions. Therefore, there is a need for regulatory frameworks through which certain

authorities may keep an eye on financial and economic discretionary choices made in accordance with the standards of economic expertise. In Afghanistan, keeping an eye on financial matters is crucial because of the country's poor economy and lack of resources and money to cover government obligations. The National Council on the Executive Branch's financial oversight is also vital in defining the country's earnings and spending. The National Council for Financial Supervision generally possesses the following competencies: approving initiatives for social, cultural, economic, and technical development (Constitutional Articles 90 and 91), approving all taxes, fees, and the means of collecting them by passing the necessary legislation (Article 242), approving the issuing of any loan and its receipt (Article 90), stipulating that the President is not permitted to sell or donate government property unless authorized by law and with the consent of the Parliament (Article 66), Approving the way that public and private properties are used, as well as safeguarding and maintaining state properties by passing the necessary legislation (Article 9), Approving the budget, approving the budget and monitoring it before adjusting the country's income and expenditure must be approved by the parliament, and then the government can act on the spending of revenues from certain sources, based on the approvals of the parliament.

In actuality, budget approval is a type of pre-action monitoring. Specifically, the Ministry of Finance prepares the budget, which includes the "regular budget" and the "development budget," and sends it to the National Council after receiving approval from the Council of Ministers. This is in accordance with Article 95 of the Constitution, which states that the government has the sole authority to propose laws relating to the budget and financial affairs. The House of Representatives is also capable of approving the national budget. During the fourth quarter of the current fiscal year, after receiving this House's advisory opinion, the administration sends the one-year budget to the House of Representatives through the Senate. And after making the necessary revisions, the House of Representatives authorizes it. The budget must be approved by the House of Representatives no later than one month after it is submitted. The budget from the previous year will be used up until the new budget is approved if it is not authorized before the start of the fiscal year. The government is required to offer the summary account of the current year's budget to the National Council at the same time as presenting the next year's budget in order to allow the National Council to review how the budget was spent in the instances that were authorized. According to the legislation, the National Council will receive the finalized budget for the preceding fiscal year within six months of the following year. The government will be held accountable to the parliament if the budget is not used in situations that have been approved. With the exception of the cases mentioned in the review of the final budget account from the previous year, the National Council's oversight of the use of the budget is also carried out through the assessment of the Supreme Audit Office's reports, which, in accordance with Articles 2 and 4 of the law governing this office, performs regular reporting to the President and the House of Representatives in its capacity as the Court Public Accounting. The approval of the budget is not one of the House of Representatives' internal tasks, although the constitution discusses its broad provisions. The Constitution's Articles 75, 90, 96, 95, 97, 98, and 99 specify the National Council's powers and authority in the area of budget and financial matters.

Special Oversight Function of the Senate

The unique monitoring role of the Senate, in comparison to the House of Representatives, is weak and constrained, and the results of this monitoring in political events are just inquiries rather than

impeachment and, consequently, the removal of the official in question. According to Article 93 of the Constitution, "Each of the commissions of the two houses may ask questions of any Minister, and such Minister may answer either orally or in writing." The following situations involve deliberate Senate oversight.

- Determining the fundamental tenets of the nation's policy; - Development, Consensus, Cultural, Economic, and Technological Programs; - Sending military units outside of the country; - Declaring a state of emergency, a war, or a truce; - Determining the declaration of war - The confirmation of international treaties and covenants by rescinding Afghanistan's accession to them.
- The approval of the government budget and authorization to take or issue loans. both Articles 64 and 90) It should be noted that the Senate also has a Hearing Complaints Commission, which functions similarly to the House of Representatives, regarding the particular judicial activity of the Senate.

Conclusion

The government must abide by the law, which is the same legislation that established it and specified the parameters of its jurisdiction, according to the rule of law. It is necessary to regularly monitor this adherence to the law. Because the rule of law cannot be effectively implemented without suitable monitoring systems, supervision is the only assurance of law-abiding government implementation. An essential component of the notion of the rule of law against the arbitrary actions of public authorities is the existence of parliamentary oversight, together with administrative and judicial oversight. The values and principles of the rule of law have not yet been entrenched in Afghanistan's legal system. Examples of how the relationship between the executive and legislative branches in the area of parliamentary oversight runs counter to the notion of the rule of law include: rejection of the parliament's motion to withdraw the ministers' confidence, rejecting parliamentary authorizations for national budgetary allocation and disregarding the parliament's regulatory clearances and forbidding some cabinet members from visiting parliament. Despite the loss of confidence in some cabinet members and the lack of a legal basis for the continuation of some government officials' work, the president's will be able to provide the basis for the continuation of some officials' activities as supervisors with other titles rather than the law, and these people continued to work for a long time. They maintained their positions. The lack of monitoring spirit on the part of the government and the president was one of the causes for the parliament's inability to fulfill its vital monitoring role, which generated a type of negative, humiliating, and erroneous attitude in the administration of the Islamic Republic of Afghanistan. The separation of powers has been damaged as a result of the dualistic nature of the supervisory system and the lack of fundamental institutional oversight, which has allowed the executive branch to abuse its dominance over the other parts of government.

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