The Reasons for the Absence of Federalism in Afghanistan Constitution of 2003

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Extended abstract

1. Introduction
The international coalition’s strike on Afghanistan in 2001 led to the fall of Taliban. In the Bonn conference (December 2001), it was approved to provide the background for ratifying Afghanistan’s new constitution, after organizing an urgent Loya Jirga (grand assembly) and determining the transitional government. One of the most important actions taken following the urgent Loya Jirga in 2002 was forming a commission to draft the constitution. In general, the basic laws in constitution are formed through the consequences of a set of events: a) the gradual development of societies and the governors and civilian’s mental preparations; b) the formation of new countries; c) transformative events such as revolutions, coups and civil wars. In the latter, such countries lay out a new constitution to reorganize the nation, after the conclusion of a crisis. The formation of the new constitution in Afghanistan occurred in the same manner.

One of the components of constitutional laws is the legal form of the government in terms of internal and territorial structure, i.e. whether the physical structure of the country is simple or complex. Federal systems are a form of complex states. During the codification of the new constitution in Afghanistan, the subject of federalization of the country became the source of several reactions, for or against the decision. It seemed as if Afghanistan had a number of the necessary backgrounds for selecting the federalist method of governing; a disparate country in terms of ethnicity, race, language and religion which has been under threat. Such an approach have brought about ethnic abuses from the past to present. Perhaps federalism could have been a proper solution for resolving issues. As a result of the presence of such backgrounds, some of the elites suggested the implementation of a federal system as the commission started drafting the constitution in 2003, which led to several stances, in favor of the suggestion or rejecting it. Despite the presence of proper substrates for federalism in Afghanistan, it was not accepted in the negotiations and meetings of the experts concerning the multiple stages of codifying the constitution;

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consequently, the political system of Afghanistan in the new constitution remained as a unitary and simple state. The present study is aimed at obtaining the reasons behind the rejection of federalism in the codification process of Afghanistan’s constitution in 2003.

2. Theoretical Framework
Constitution is a legal document representing the public will, which states certain rules concerning the form of the government, structure of the state, authorities of governing institutions, public rights and the nation’s freedom. The government of a federal country, consists of numerous units with certain social, political, administrative and geographical identities which becomes a complex state through unity among such components. In federalism, the constitution places international functions under the exclusive authority of the central government and considers the member states subject to domestic and inevitable rights in the whole federal society. Federalism is a way of government granting partial independence to geographical divisions. Federalism can be considered as a set of ideologies, values and insights which represent a philosophy based on preserving unity in diversity. The existence of inhabitants with a variety of races, religions and languages, each bearing a history of its own, cause federalism to allow minorities govern themselves in compliance with their habits and customs extensively. Considering the fact that the policies set by the government in a multiethnic community can bring about ethnic violence in the society, some suggest a federal system as a solution for problems of this nature; they believe that through the division of power and governance, the ethnic leaders and elites’ desire for power is satisfied while the central power is no longer the only unit of governance. One of the shortcomings of federalism is the risk concerning territorial division; when loyalty to the state government reaches a point where it leads to independence from the federal state, disinterest toward such entity and the emergence of sustainable boundaries among states through racial, national, and lingual interests. In this case, due to disagreements between the state and the federal government, people would assemble under the state’s banner, putting the federal government at risk as a result. A number of reasons expressed by anti-federalists include: inefficiency (federalism cause confusion and errors in carrying out the common affairs among states), tyranny (there is a tendency to pressure minorities in local governments), higher financial costs (the financial costs of a federal government may be more than savings), reduction of the central government’s power in pursuing national purposes, decline in the possibility of distributing wealth among regions.

3. Method
Data collection was carried out according to library studies and analyzed via attributive explanation based on surveys. The hypotheses were obtained following the initial and basic studies of texts and primary accessible resources on the negotiations during the codification of the eighth constitution by the representatives
along with the opinions of experts in the areas of community and policies at the same period. Then, it was attempted to analyze the major reasons for the rejection of federalism in Afghanistan’s new constitution (in the form of a compound device containing four hypotheses pursuing a single purpose). In the beginning, the research pathway was passed from texts to hypotheses and vice versa. After attaining the whole existing comments during the codification period of the constitution in disagreement with organizing a federal system in the country, it was attempted to enumerate and weigh each hypothesis. The number of the obtained comments related to each hypothesis, enumeration and the reasons for the non-acceptability of federalism were rated.

4. Findings
Employing a document analysis approach according to surveys, the authors concluded that the most important reasons for rejecting federalism during the codification of the new constitution include the possibility of division in the country, the present economic gap among states, the possibility of increasing interference by the neighbors, and the low literacy and political insecurity of the people, respectively.

Keywords: Afghanistan, Constitution codification, the eighth constitution, Federalism, opponents, Proponents

References (In Persian)


References (In English)