

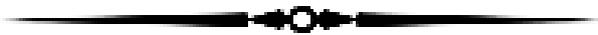
# **The Republic and Its Enemies**

## **The Status of the Republic in Afghanistan**



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Afghan Institute for Strategic Studies



**The Republic and Its Enemies**  
**The Status of the Republic in Afghanistan**



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### **The Republic and Its Enemies**

### **The Status of the Republic in Afghanistan**

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# 1

## INTRODUCTION

Today, most states appropriate the term “republic” as a title for themselves. These titles include democratic republic, federal republic, socialist republic, Islamic republic and many more. Unlike the democratic republic, a socialist republic is based on Marxism idea of the dictatorship of the proletariat and an Islamic republic is based on Islamist ideology. Similarly, most of the global south republics are just nominal republics; in essence, they are authoritarian regimes. Ironically, many republics in the global south are neither democratic nor liberal. For instance, the first self-proclaimed republic established by Davod coup in 1973 was a “monarchical republic,” as Seddiq Farhang called it. The second republic which came after the 1979 communist “revolution from above” was a socialist republic. And finally, the third republic established in 2004 is facing a myriad of crisis. Hence, these undemocratic and illiberal republics pose a theoretical and empirical challenge to the modern political theory of civic republicanism.

After the third wave of democratization (Huntington 1991), there was a significant rise in the number of democratic states throughout the world. However, in recent years, democracy seems to be in retreat globally (Freedom House 2020) and the situation in Afghanistan is not much different. More than any other time in last eighteen years, the

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prospect of a peace deal with the Taliban has not only placed the fate of the third republic in a test but it has also posed an existential threat to it. The Taliban has directly opposed the Republican system in favour of an Emirate<sup>1</sup> or any other form of a religious state.<sup>2</sup> The difference between the two regimes is not just political but also moral, normative and functional.

Having said that, by juxtaposing different classical and modern political theories, this treatise presents four key features of a republic and provides a detailed analysis of the Islamic republic. Based on the four features of the republic as a framework, it analyses the status and type of republic in Afghanistan. It suggests that the third republic (2004) is facing *an ideational, normative, structural, and functional* crisis in Afghanistan.

First, the *ideational* crisis of the republic is the lack of a meaningful ideational basis. In the last eighteen years of war against the Taliban, the political elites in Afghanistan have not been able to present a political vision to mobilise the people around one idea. “The idea of Afghanistan” has remained undertheorized.<sup>3</sup> “The idea of Afghanistan” should basically respond to the question: based on what core values should Afghanistan be defined? The concept of the republic is hardly translated into practical terms and ideas resonating the desires and

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<sup>1</sup> Despite the fact that the Taliban does not propose Emirate as an alternative model polity at the recent talks, their idea of Afghanistan remains to be an Emirate.

<sup>2</sup> Religious state in Islam comes in multiple forms including Caliphate, Emirate (Taliban model), Welayet (Iranian regime).

<sup>3</sup> On the idea of Afghanistan see Professor William Maley’s op-ed titled Some Reflection on “The Idea of Afghanistan” at AREU. Maley talks about two different ideas of Afghanistan: first, the idea of pluralist political space and second, the Taliban’s totalitarian idea of Afghanistan.

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inspirations of the people of Afghanistan. The current notion of the republic is grounded on romanticism and populism, rather than a substantial and honest debate to resonate the essence of a republic. As the peace talks with the Taliban gained momentum, the term “republic” has come to the centre of political and public discourse. Nonetheless, it has become a common word used in an unsophisticated manner by political elites and their international partners to deceptively mobilise the commoners on their side. In such a condition, the solution is to rescue the Republic from the ills attached to it.

On the *structural* dimension, the republic is weakened by the lack of constitutional constraints to check the arbitrary use of power. Three main features of constitutional constraints, including separation of powers and checks and balances, counter-majoritarianism, and rule of law are missing.

On the *functional* dimension, corruption, patrimonialism, factionalism and absence of active citizenship emasculates the republic in Afghanistan.

Finally, the *normative* bases of the republic have also been undermined by illiberal ideas, lack of civic virtue, extremism and ethnocentrism as well as undermining of the sovereignty of the country due to massive international presence and intervention. It is found that the republic is not only facing an existential threat from the fanatics and fundamentalists such as the Taliban, but also from the ethnocentrist, factionalist and populist political elites, both in and out of the government, who run a corrupt state and rig elections that are supported and accepted by the international community. Ironically, the corrupt

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political elites of the government claim ownership of the republic and lay the responsibility of the failure of the republic on the Taliban and the ongoing war. Yet, instead of pronouncing and safeguarding the republic as the end-state, they have abused and misused the republic for their own political ends. The challenges and threats to the republic in Afghanistan are much too complex and multidimensional to be reduced to religious fundamentalism and the Taliban. It is clear that the republic has paid a heavy price in Afghanistan at the hands of those who violently opposed it, as well as those who betrayed it.

Hence, the question which entangles the curious mind is: *how has the third republic in Afghanistan deviated from the civic republican principles?* To answer this question, this treatise seeks to address the following sub-questions as well:

1. What are the normative and empirical foundations of a republic?
2. What are the ideational, structural, normative and functional challenges to the republican system in Afghanistan?
3. How is an Islamic republic different from an Islamic state and what does the term “Islamic” mean in the “Islamic republic”?
4. What does the power elite in Kabul, mean in their use of the term “the republic” and how it is deployed by the Kabul regime?
5. How has the factionalist and corrupt political elite posed a threat to the republic?
6. How can we renew our republic?

This treatise aims to address the above questions through a philosophical, empirical and historical inquiry. It aims to theorise on the “idea of Afghanistan” as well as the concept of “the republic.” In this

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treatise, philosophical inquiry refers to the critical analysis of existing classical and modern philosophical traditions and examinations of axiological assumptions. The first two sections explore the concept of the republic from the perspective of western and Islamic political theory to find out the *ideational* and *normative* foundations of the republic in Afghanistan. A brief history of constitutionalism and democratisation is discussed in the third section. Based on the theories outlined in the first section, the last section of the paper empirically analyses the *structural* and *functional* status and the prospect of the republic in Afghanistan.



## **THE WESTERN POLITICAL THEORY OF THE REPUBLIC**

The third republic of Afghanistan is facing an existential threat. This challenge is partly because of the lack of an elaborated conceptual basis which is itself a sign of poverty of an indigenous political theory. In other words, a political theory perspective is missing in the study of the republic in Afghanistan. Rajeev Bhargava (2012: 56-57), the well-known Indian political theorist, elaborates the absence of political theory in India in three points, which can explain the case of Afghanistan as well. First, the absence of political theory means a lack of reliable work to elaborate the “conceptual structure” and “constitutional meanings” of the key political terms, including the “republic.” Second, the “existing work shows an inadequate grasp of the structure of ideas embedded in the constitution.” Third, little attempt has been made to understand and justify this existing polity and the underlying values of the constitution based on the negotiations and debates during the processes of crafting the constitution.

Having said that, by examining the classic and modern theories of republicanism, this section extracts four key features of a republic. The next section will try to unpack the “conceptual structure” and

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“constitutional meaning” of the Islamic republic. This will allow us to understand the background conditions that created the possibility of imagining and operationalizing the Islamic republic.

In modern political theory, a republic is a form of state and is frequently used as an opposing concept to the idea of a monarchy. Yet, over time, the concept of the republic has changed its meaning from the classic political theory. While classic political philosophy considered “democracy” to be fundamentally *different* from the republic, modern political philosophy considers democracy as an integral part of the republic. Nonetheless, while there are moral and political similarities between liberalism, democracy, and republicanism, these three concepts are distinct from each other. Republicanism defines freedom in a broader context compared to that of liberalism. In republicanism, freedom is not just non-interference but a lack of domination as well. A republican form of the government aims to check dominium (Pettit 2002: 171). For instance, Norberto Bobbio and Maurizio Viroli argue:

[w]hereas liberalism perceives freedom as an absence of interference and democracy identifies freedom in the power to impose rules upon oneself and not to obey rules other than those imposed on oneself, republicanism considers true freedom to be the absence of any dependency on the arbitrary will of a single man or a group of men (Bobbio and Viroli 2003: 8).

The most ancient usage of the term “republic” goes back to the Greek philosopher Plato. Giovanni Sartori (1973) argues that it is falsely assumed that Plato’s Republic refers to a form of the state. The Greek name of the book *Politeia*, that was translated as *res publica* (republic) in Latin, did not refer to a form of the state but something public or

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“affairs of the community.” Similarly, Aristotle’s concept of a good city was translated as *de optima republica*. Sartori problematizes the whole notion of politics as a perennial concept created by Aristotle and rediscovered by Machiavelli. He argues that the notion of politics in ancient Greece was substantially different from the modern notion, which refers to the state as an institution that exercise of power imposed on a society. In brief, *res publica* or *cominium politicum* or *dominium politicum* did not refer to the same meaning of a “state” as we understand it now; rather it meant “the good of the community” or “a stateless society.”

According to Sartori, the concept of politics as a vertical order of power and the state goes back to Rome, not Greece. In the Roman thought, the term politics become more juridicized. With the fall of the Greek *polis*, the “*demos*” and the idea of democracy dwindled as well. The Roman republics were not examples of democracy. Subsequently, in the Middle Ages, the state was referred to with different terms such as “*principatus*, *regnum*, *dominium*, and *gubernaculum*” until the seventeenth century (Sartori 1973: 9).

It is not a matter of accident that Niccolò Machiavelli used the term “the prince and principality.” In his treatise, *The Discourses*, published in 1996[1517], Machiavelli, residing in the republican state of Florence and influenced by the ancient Roman republic, revived this debate after one thousand five hundred years. Recalling the three types of the state—Principality (Monarchy), rule of the Best (Aristocracy), and Popular rule (Democracy)—he identified misconducts and mischiefs associated with each type. Each of these forms of the state, according to Machiavelli,

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“may be so easily corrupted...the Principality easily becomes a tyranny, autocracy easily become State of the Few (oligarchies), and the Popular (Democracy) without difficulty is converted into a licentious one (anarchy)”<sup>4</sup> (Machiavelli 1996[1517]: 7). While Machiavelli counted the mischiefs of each type of government, he suggested that an ideal and stable government would be the one which combined the best qualities of all forms of the state, which he called it a republic. The advantage of this would be that each of these institutions would check on one another. The best example of such a state was the one formed by Lycurgus in Sparta which continued for more than 800 years, unlike Athens where Solon established a popular state (Machiavelli 1996[1517]: 8). Of course, the concept of republic understood by Machiavelli is much different from its contemporary avatar. Much like the ancient philosophers, such as Aristotle, Machiavelli was in search of the best form of the state, one that balances the social order and parties involved in the government, and provides a check against the dangers of the threatening forces. To establish order, one should balance the claims of moral virtue, wealth, and numbers (majority). He was of the belief that moral virtue cannot contribute to balance. Instead, the balance shall be created by restraining and limiting the power of different social forces through a constitution, which is possible in the republic.

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<sup>4</sup> The same claim was made by President Mohammad Daoud to justify his 1973 coup against the constitutional monarchy. Actually, it was more like a charge against his cousin, Mohammad Zahir Shah rather than a simple claim. In his first speech in the Radio Kabul, Daoud stated that “democracy as a government of people was converted into anarchism [anarchy] and the constitutional monarchy was converted into an absolutist state” (Zwandun 1973a: 7).

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Two and a half centuries later, Rousseau conceptualised the idea of a “social contract” based on ancient Sparta, the republican Rome, and the city-state where he was living – Geneva. In the words of Albert Weale, Rousseau envisioned an unmediated popular government where “citizens assemble and decide on the content of laws and public policy without the mediation of political representatives. In their decision, each seeks the common good or general will” (Weale 1999: 25). Rousseau’s general will does not refer to the sum total of each individual’s preferences and self-interest; rather it is thinking and decision making of all based on the public interest. A contemporary version of this kind of governance is *Ujamaa*, as conceptualised and operationalised by Julius Nyerere, the President of Tanzania in 1961.

Living during the same time, Immanuel Kant made a similar distinction in the forms of government based on the mode of administration established in two kinds: republic and despotic. Kant argued, “it [democracy] establishes an executive power in which ‘all’ decide for or even against one who does not agree; that is, ‘all,’ who are not quite all, decide, and this is a contradiction of the general will with itself and with freedom” (Kant 1795, Section II, Para 4). Kant’s conception of democracy was Athenian democracy where all the *demos* were part of the *polity*. In other words, everyone, except for slaves and women, was directly a part of the decision-making process.

Influenced by these debates on the form of the state and the republic, the founding figures of the United States revived the republic after almost two thousand years. James Madison wrote in the Federalist Papers (2008[1787]: 52) that, “a pure democracy, by which I mean a

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society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction.” Similarly, Thomas Paine stated that what is arbitrary about monarchy is that an individual holds power “in the exercise of which, himself, and not the *res-publica*, is the object. Republican government is no other than government established and conducted for the interest of the public as well individually as collectively” (Paine quoted in Pettit 2002: 202). It is clear that democracy as a form of government was characterised and identified with disorder, instability, and factionalism. On the contrary, these authors distinguished a republic with the order.

Before Kant, Montesquieu articulated the concept of the republic in his book *The Spirit of the Laws* (1748), which influenced members of the early American political elite such as John Adams. According to Adams, a republican government is the one in which either the whole or a part of the population possesses the supreme power. Hence, a republic could be arranged as a democracy or aristocracy. However, the state should be subject to the law. It is in this context that some monarchies such as Holland, Poland or Venice were referred to as republics in the eighteenth-century texts. However, for Adams, a republic is not based on equality of the citizens, as the citizens of the republic are not equal (Shoemaker 1966: 85–86). Hence, the other characteristic of a republic in classic philosophy was the rule of law, where law represents a general will. For instance, Rousseau said, a republic is a state which is governed by the law irrespective of its form of government. This is in line with the Roman conception of the republic where Cicero stated that *res publica* is

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a state belonging to all the people (Bobbio and Viroli 2003: 10). One can understand that in the eighteenth century, the republic was not a particular form of government. The republic or *res publica* indicated any government which served the general public interest (Shoemaker 1966: 87). This has been reflected eloquently by Kant (1795, Section II, Para 2)

The only constitution which derives from the idea of the original compact, and on which all juridical legislation of a people must be based, is the republican. This constitution is established, firstly, by principles of the freedom of the members of a society (as men); secondly, by principles of dependence of all upon a single common legislation (as subjects); and, thirdly, by the law of their equality (as citizens). The republican constitution, therefore, is, with respect to law, the one which is the original basis of every form of civil constitution.

The other meaning of the republic is associated with the concept of separation of powers, which meant distinguishing and separating the executive power from the legislative and judiciary, while these bodies are all combined in an authoritarian state. Moreover, in the eighteenth century, when the young democracies were established in North America, the separation of power was not observed. The colonies that secured their independence from Britain in North America initially saw all the power concentrated in the house of the legislature. Most of these were unicameral and had the power to select not only the executive but also the courts and, in some cases, an upper house. With the creation of the confederation, a uniform judiciary did not exist and the Congress functioned both as the legislature and the executive. Later John Adams and James Madison argued against the mixture of the legislature,

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executive, and judiciary all in one body. Subsequently, many authors of the constitution of the United State endorsed the same idea (Shoemaker 1966: 94).

The idea of rule of law and constitutionalism has remained central to the concept of the republic in the contemporary political philosophy as well. Writing in the context of the Vietnam War and the Pentagon Papers, and reflecting on how the governments told deliberate lies, Hannah Arendt argued, “half-hearted attempts of the government to circumvent Constitutional guarantees and to intimidate those who have made up their minds not to be intimidated, who would rather go the jail than see their liberties nibbled away, are not enough and probably will not be enough to destroy the Republic” (Arendt 1972: 47).

Related to the aforementioned characteristic, the other distinction drawn by American political activists is related to representation. For instance, Madison argued in *The Federalist Paper 14*, “that in a democracy, the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents. A democracy consequently will be confined to a small spot. A republic may be extended over a large region” (1787: 68).

To summarise, a Republican form of government in the western world – revived in Renaissance Italy by Machiavelli, the 18<sup>th</sup>-century American revolution, and the French revolution – referred to the opposite of a despotic government. There are four clear distinctions made in the classic political philosophy, as discussed above. First, a republican state is based on “civil constitution” in the words of Kant, and rule of law. Secondly, it is based on the separation of power, and

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checks and balances. Thirdly, it is based on representative democracy. Fourthly, it shall reflect the general will and public interest.

In contrast to the republic, until the eighteenth century, democracy was considered a form of government in which the government was run directly by the entire population. Most philosophers were inclined to categorise democracy as a form of despotic government.

*Table 1 Ages of Republicanism in the West*

<b>Three Historical Ages of Republicanism in the Western</b>	
1	Classical antiquity: Greece & Rome
2	Renaissance Italy, 18 <sup>th</sup> century America, & the French revolution.
3	Late 20 <sup>th</sup> century: republican turn

In the late 18<sup>th</sup> century, republicanism gave way to liberalism which, unlike republicanism, emphasised the primacy of right and protection of the individual by the state. Nonetheless, by the end of the 20<sup>th</sup> century, liberal citizenship caused passivity of citizens. As a result, interest towards republicanism which emphasised on active political participation and civic virtue was renewed – what Philip Pettit calls it a “republican turn.”

The value addition of the contemporary theory of republicanism is an alternative and nuanced notion of freedom compared to that of liberalism. First, unlike the liberals, the republican does not just emphasise on recognition of rights, but, most importantly, they endorse the role of active citizenship or political participation, as they are the crucial factors in preventing political decay, corruption and limitation of freedom. Active participation is possible only if the citizens are motivated

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by civic virtues and they are transformed from free riders and self-centred individuals to citizens that take part in public affairs with a commitment to the common good (Patten 2004). Second, while mainstream liberalism defines liberalism as the absence of interference, republicanism takes one step forward to define freedom as non-domination or absence of arbitrary power or what Philip Pettit calls as antipower.

Freedom as noninterference is open to the benign dictator model of the state, since all law, even nondictatorial law, involves an abrogation of such freedom, and it is tolerant of relationships of domination, since domination need not mean interference ...Freedom as antipower, on the other hand, requires a specific sort of law and polity in which the powers that be are denied possibilities of arbitrary interference (Pettit 2004: 155).

Simply put, according to Quentin Skinner, a republican state is a “free state” where decision making is based on the general will of the people (Patten 2004). However, a critical question from Pettit is “[h]ow can the state be organised so that state interference involves little or no arbitrariness?” (Pettit 2002: 171). Hence, it is important to explore policy and practical utility of the above-mentioned republican principle.

To begin with active citizenship, the republicans believe that individuals are not inherently born with qualities of being a good and active citizen. These qualities that they called it civic virtue would be nurtured through social institutions such as education, culture and regulation of behaviour (Patten 2004). The importance of civic citizenship has been highlighted by Robert Putnam, Robert Leonardi and Raffaella Nanetti in their study of government performance in Northern and Southern Italy. According to them, government performance is

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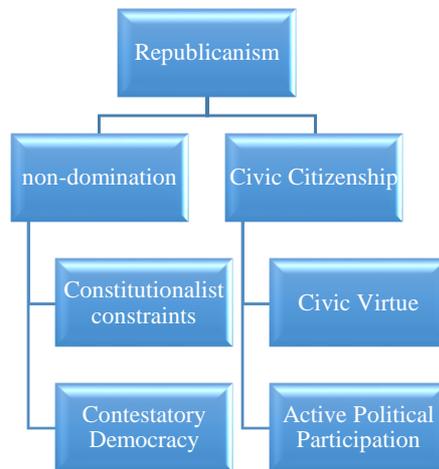
better in those regions where there exist a strong civic community which include participation in public affairs and civic associations (Chatterjee 2011: 200).

For the second element – non-domination – Pettit puts forward two criteria for a republic: constitutionalist constraints and a democratically-controlled decision-making process. Similarly, Fareed Zakaria’s constitutional liberalism and Albert Weale’s liberal constitutionalism seem synonymous with the idea of the republic. Weale’s liberal constitutionalism is a form of government where more than popular political participation, strong constitutional mechanisms to counter majoritarianism and to check unlimited power are the substantive features. These constitutionalist measures include an independent and strong judiciary, and checks and balances. Zakaria sets constitutional liberalism as a precondition for democracy. Constitutionalist constraints, which are a product of years of constitutionalist movement and constitutionalism, are those legal instruments which check the powers. These constraints shall be developed in such a manner so that it cannot be manipulated by an individual or group. In other words, no one should have the discretion to seize constitutional/public institutions in their hand. In a republican system, the highest normative authority, which defines the structure of the state and its relation with citizens is the constitution.

Therefore, the modern political philosophy transformed and broadened both the meaning of democracy and of “republic.” The meaning of democracy as a form of unmediated/direct popular government was transformed by John Stuart Mill in his 1861

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book *Considerations on Representative Government*. He spoke of a proportional representation system where the key policy-making should take place at the behest of the majority. Yet given the possible tyranny of the majority, a bill of rights to guarantee the protection of the individual's rights combined with the separation of powers is consistent with Mills idea of democracy (Weale 1999: 32). The modern republic is no more defined in contrast to democracy. Instead, a republic is defined as the combination of constitutionalism and democracy (Zakaria 2003; Weale 1999; and Pettit 2002).



*Figure 1 Main features of the Republic*

Pettit devises three conditions, namely “empire of law,” dispersion or separation of powers, and counter-majoritarianism so that political institutions could be non-manipulable (Pettit 2002: 173). These conditions control and limit the will of those in power. Such a legally-established mechanism to constrain the arbitrary will of those in power is called constitutionalism. The empire of law basically means the rule of law where the law should be applied indiscriminately to all,

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irrespective of social and political status, including the legislatures. Apart from this, the law should be consistent and durable. The opposite of this scenario would be the rule by law and arbitrary power. The rule of law also precludes any form of ad hoc decision; instead, it assumes that the principled decisions should be based on the law. The legislature cannot implement a law on people without imposing it on her/himself. The apparatus of the government shall act under the authority of law. By checking the arbitrariness of power, the rule of law or empire of law guarantees liberty (Pettit 2002: 176).

The second condition for constitutional constraints, according to Pettit, is the dispersion of power. This idea comes from Montesquieu who distinguished different roles and functions, namely, making law, administering the law and adjudicating cases based on law. Dispersion of power is not limited to the separation of power between three branches of the state. It includes further measures and mechanisms. Division of parliament into two chambers (the bicameral model) and decentralization of power are also features of dispersion of power and republicanism (Pettit 2002: 179). However, Republicans are conscious of the fact that the complete dispersion of power is neither feasible nor desirable. An extreme dispersion of power may cause regimentation of functions which may produce hurdles to achieve the republican goals.

Fareed Zakaria (2003) speaks of the reverse measures of the same process as a usurpation of power in two horizontal and vertical dimensions. The horizontal usurpation of power is the extraconstitutional transfer of authority from judiciary or legislative to the executive branch. One of the examples of such usurpation of power

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by the executive is rule by the executive or presidential orders. For instance, Carlos Menem issued around 300 decrees, three times as many as all other presidents of Argentina combined. Likewise, the vertical usurpation is an encroachment on the authority of local governments or non-governmental groups by the president or/and the executive.

The third condition of constitutional constraint is a measure to counter majoritarianism. The law shall not be subject to change based on the majority's will and excessive desire. Provisions shall be developed to prevent the amendment of law based on a simple majority. This measure not only includes a condition of more than the regular majority ("supermajority"), but also a bill of rights, recognition of constitutional constraints, and bicameral parliament (Pettit 2002). Weale added many more measures to preclude majoritarianism. These include,

independent judicial systems with the powers to strike down legislation that is unconstitutional; constitutional restrictions on the powers of legislatures to raise taxation, via such devices as the requirement to maintain a balanced budget; control of the money supply that is independent of the legislature; reductions in the role of parties in the conduct of government; and insulation of decision-makers from the pressures of social groups and interest organizations (Weale 1999: 35).

These are the characteristics that many other republicans of the 18<sup>th</sup> and 19<sup>th</sup> century also raised. James Madison expressed his concern in the *Federalist Papers* (1787) over how democracy might lead to oppression by the majority, and turbulence as the public choice is not stable. Similarly, Tocqueville spoke about the tyranny of the majority.

The second criterion of non-domination is democratic control of the decision-making process. This means that "everything done by a

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republican government should be effectively contestable by those affected.” (Pettit 2002: 173). The need for democracy is crucial from the perspective that public policies and decision making should not be based on private or sectional ideas or interests. Instead, they should be formulated according to the unforced consent of the people. For Pettit, more than consent, a democratic government is the one that is based on a contestatory approach (Pettit 2002: 185). The difference between a contestatory democracy and a consent-based democracy lies in the fact that a contestatory democracy is based on a process of selection of laws, and the standard democracy is based on “a process of design.” Pettit argues that a contestatory democracy is aligned to the republic. He argues that according to John Locke, the social contract as a basis of the government is not just about consent but also about trust. Accordingly, the right to resistance is the defining factor of the republic. For a democracy to be contestable, Pettit identifies three preconditions: first, the existence of a basis for contestation; second, the existence of a voice for contestation; and third, the existence of a forum for contestation (Pettit 2002: 202).

Decision making should be conducted in such a manner that there exists a basis for contestation. There are two paths to such a process: decision making shall be based either on the bargaining or on the debate. There is a difference between bargaining-based decision making and debate-based decision making. In a bargaining-based decision making, the parties have predefined ideas and interests. The agreement would take shape based on the concession of parties to each other. In contrast, debate-based decision making is a scenario where the parties shape a

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decision by considering each other's standpoint. The interests of the parties would be formed in the process. Of these two modes of contestation, the debate-based decision making is suitable for the republic. First of all, in bargaining-based decision making, a certain level of power or weight is needed for a party to enforce its interest. In such a process, the actors who cannot carry sufficient negotiating power to bargain with other parties effectively would be in a losing condition. However, in debate-based decision making, anyone who wants to make a point or case pertaining to a line of public policy or decision will have the opportunity to do so. In practice, this means the establishment of procedures to enable the citizenry to have a word in all forms of decision making, including executive, legislative and judiciary.

This dialogical model was warmly embraced by those legislators who saw themselves as exemplifying the republican ideal in the late eighteenth century. In particular, it was used to defend an image of the legislative representative, not as a deputy under instructions from their constituents, but as someone charged to deliberate with the interests of the citizenry at heart (Pettit 2002: 189).

It is important to note that the *procedure*, which is a reasoned debate and deliberation process, is much more crucial than the *outcome*, which is consensus. Once the basis of contestation is available, it is important that no one must be excluded. Apart from the deliberative character, the republic is also supposed to be inclusive. If a policy decision affects the interest of a group, the group shall have a right to raise its voice to influence the policy. All the marginal and excluded social groups should be included in the decision-making process not only in the legislature but also in executive and judiciary. This condition

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brings Pettit's republicanism close to multiculturalism.

The third condition of democracy in a republic is the availability of a forum to hear these voices, concerns, and allegiances. Examples of such forums are popular movements such as the green movement, the women's movement, LGBT movement or movements by the ethnic minorities. While social movements are critical for the republic, there is much more need for routine and depoliticised contestation of decisions.

From the above discussion, four main features are extracted for a republic: civic virtue, active participatory citizenship, constitutional constraints and contestatory democracy. The rest of this treatise will examine the status of the republic in Afghanistan based on the above features.



## CONCEPTUALISING “ISLAMIC REPUBLIC”

The first article of the 2004 constitution of Afghanistan stipulates that “Afghanistan shall be an Islamic Republic.” Based on this, Afghanistan adopted the Islamic Republic as a form of the state as opposed to the constitutional monarchy and Islamic state (Emirate/Welayet/Caliphate). Apart from Afghanistan, there are three countries whose official title is an Islamic republic: Iran, Mauritania and Pakistan. A simple definition has been given by Barnett Rubin who defines Islamic republic as “a form of government based on popular sovereignty (and is, therefore, a republic, rather than a kingdom or emirate), but where the exercise of that sovereignty must comply with Islamic laws” (Rubin 2020: 173). However, this simplistic definition cannot answer the following questions: What was the ideational foundation of the Islamic Republic in Afghanistan? Was the “Islamic Republic” as a political system taken for granted and adopted randomly or was it appropriated based on a thorough thinking, philosophical thought and visionary idea? How is an Islamic republic different from an Islamic state or an Emirate? What does the term “Islamic” mean in the “Islamic republic”? And Is there a conversation between the western political theory of republicanism and the Muslim ideas on Islamic republic? Hence, one needs to explore the

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genealogy of republicanism within Muslim political thinking. The idea of republic and republicanism is not strange to Muslim thought. In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, Muslim modernists and reformists, such as Jamaluddin Afghani, Mohammad Abduh, and Mohammad Iqbal engaged with the idea of the republic. They tried to reconcile the concept of republicanism with Islamic knowledge and beliefs.

Jamaluddin Afghani has a less known essay titled *Despotic Government, (al-hukumah al-istibdadiyah)* published in Egypt's Adib Ishaq's weekly newspaper in 1879. This essay is translated by L M Kenny at the *Journal of the American Oriental Society* in 1966. Afghani's idea was influenced by both the medieval Islamic thinkers, such as al Farabi and Ibn Sina, and modernity. In his essay, under the influence of the French revolution, he supported a constitutional and republican government. He said that long influence of ignorance, superstitions, despotism, and rejection of science are the reasons that prevented the East from having a republic and a constitutional government (al-hukumah al-muqayyadah), a kind of rational government. According to him, a constitutional government is the one which is based on “deliberations, and the curbing of the voracity of the greedy ones” (Kenny 1966: 22). On the opposite, he presented a typology of despotic government, including the cruel government (al-hukumah al-qasiyah), the oppressive government (al-hukumah al-zalimah), and the compassionate government (al-hukumah al-rahimah) (Kenny 1966).

Half a century later, in 1930, Mohammad Iqbal gave a series of lectures in Madras, Hyderabad, and Aligarh. The compilation was

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published as *The Reconstruction of Religious Thought in Islam*. He (1977) realised that universal Caliphate is not practical but the republican state is compatible with the spirit of Islam. He was a keen observer and admirer of the Ottoman empire reform and transformation. Iqbal stated that “the republican form of government is not only thoroughly consistent with the spirit of Islam, but has also become a necessity in view of the new forces that are set free in the world of Islam.” To substantiate his point, he used Ibn Khaldun’s theory of the state. Ibn Khaldun believed there are “three distinct views of the idea of Universal Caliphate in Islam: (1) That Universal Imamate is a Divine institution, and is consequently indispensable. (2) That it is merely a matter of expediency. (3) That there is no need of such an institution” (Iqbal 2012: 125). The first view belongs to traditionalist jurists and contemporary Islamists. The second view is held by Mutazilite, the rational school of Islam. And Khawarij believes the last view. According to him, Turkey was transforming from the idea of an *indispensable* universal Caliphate to the idea of the *expediency*. Such a shift was possible with two fundamental transformations with respect to *Ijtihad*<sup>5</sup> and *Ijma*<sup>6</sup>, the two sources of law in Islam.

Iqbal argued that the Caliph need not to be just one person. Granting the Grand National Assembly in the Ottoman Empire with the authority to *Ijtihad* proved that an elected institution or group of people could also carry it. According to Iqbal, *Ijma* was essential for

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<sup>5</sup> *Ijtihad* is an act of drawing a judgment and religious norm for the issues that are new and which has no religious understanding from the main sources of Islam, that is Quran and Sunnah.

<sup>6</sup> *Ijma* is a collective consensus of *Ulama* (clergy).

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establishing a modern polity. He (2012) argued that this crucial norm – *Ijma* – had been forgotten in the Muslim community. Most probably, the reason that *Ijma* was not institutionalised as an elected legislative assembly was due to the establishment of a monarchy in the form of Emirate, which came after the fourth Caliph in early Islam. The institutionalisation of *Ijma* was not consistent with the political interests of the Umayyad and Abbasids, because it would have challenged their authority. Hence, they left *Ijtihad* to the individual Mujtahids, the ones that Iqbal calls “doctors of Islam.” Iqbal supported a republican government and a legislative assembly, and asked Muslims to revive the *Ijma*, and transfer the right of *Ijma* from *Ulama* to the national assemblies. According to him, “the growth of republican spirit and the gradual formation of legislative assemblies in Muslim lands constitute a great step in advance” (Iqbal 2012: 138).

With the disintegration of the Caliphate, most of the Muslim states such as Turkey, Morocco, and Arabia opted for the distinct polities. Iqbal supported Ibn Khaldun’s position that in the modern world, the condition of *Qurayshiat* (being from the Quraysh tribe of Arab) for the Caliphate was not possible. Accordingly, he said that the essence of Islam had been undermined by Arab imperialism. For Iqbal, Islam was neither accepting of nationalism nor supportive of imperialism. For an effective political formation, first, all Muslim countries should become independent and think of their collective selfhood; thereafter they should establish a family of republics bound to the common spiritual aspiration under one president. Iqbal celebrated the idea of the League of Nations

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which could facilitate the social sphere of nations and recognised the ethnic and racial features of states (Iqbal 1934: 185).

The above thinkers become the forerunner supporter of the constitutional democratic nationalist republics in the Muslim world in the first half of the twentieth century. The idea of Iqbal was accepted by the Muslim intellectuals in South Asia, which contributed to the development of parliamentary democracy in Pakistan. Similarly, Abduh advocated for the nationalist party to resist the annexation of Egypt to the Ottoman Empire (Amir et al. 2012). He believed in the plurality of the polities and the establishment of a republican form of government. This was not a breach of religious norms for him (Chandra 2012). Finally, Jamaluddin Afghani was the advocate of the constitutional democratic nationalist government under Sharif Pasha in Egypt.

Having said that, we also need to acknowledge the difference in the idea of the republic of these thinkers. While Jamaluddin Afghani's idea in the above article was a secular one, Iqbal strongly rejected differentiation between the matter and the spirit. He said, “the State, according to Islam, is only an effort to realise the spiritual in a human organization” (Iqbal 2012: 123). He admired the second supplementary clause of Persian Constitution of 1906 concerning the establishment of “a separate ecclesiastical committee of Ulema - conversant with the affairs of the world - having power to supervise the legislative activity of the Mejliss.” (Iqbal 2012: 139), because, maybe, most of the Parliament members did not know Islamic law. The clause stated that the Ulama would present a list of twenty Ulama to the Parliament. Then

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the parliament would choose five or more Ulama from the list as the members of the parliament to serve as a committee to review the ratified laws for their compliance with Sharia. This is similar to the demand of the Taliban for the creation of a Supreme Council of Ulama with the veto power to review the law for their compliance with Sharia.

Nonetheless, it is understandable that they did not use the term “Islamic” as an adjective to qualify a religious connotation for the republic. However, there are parallels between the western philosophy of republicanism and these thinkers. Of the key features of the republicanism, at least two, civic virtue and constitutional constraints, have resonated in the writing of these thinkers.

With the emergence of fundamentalist Islamic movements in the second half of the twentieth century, the Islamic connotation to the modern state was conceptualised. For instance, the Islamist parties such as Jamaat-e Islami of Abul Ala Maududi as well as other Ulama, particularly Maulana Shabbir Ahmad Usmani, a Deobandi *alim* who became Shaykh al-Islam (or grand *mufti*) in Pakistan, in 1949 demanded and conceptualised the creation of an Islamic state. They drafted a 12-point resolution called the Objective Resolution which was presented in the Constituent Assembly in 1949. It aimed to draw guidelines and principles for the constitution of Pakistan. The Objective Resolution lays down the fundamental principles of Islamist ideologues and their vision of an Islamic republic. It declared that

Sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust... Wherein the State shall exercise its powers and authority through the

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chosen representatives of the people; Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed; Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah; Wherein adequate provision shall be made for the minorities to profess and practice their religions and develop their cultures...Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality...Wherein the independence of the Judiciary shall be fully secured (Government of Pakistan 1949).

As this resolution was ratified by the 1956 constitution, the official name of Pakistan was adopted as the Islamic Republic of Pakistan. The above resolution, as a sort of Bill of Rights, alluded to Qur'an and Hadith, except for an allusion to chosen representatives. There is no prescribed governance structure as such for the realization of the mentioned God-given rights. It also deviated from republicanism in two instances. First, as discussed in the first section, republicanism prioritises active citizenship over right. The Objective Resolution does not endorse active citizenship. Second, republicanism substitutes a contestatory model of democracy over representative democracy that the resolution talk about.

After the Islamist revolution, Iran also adopted the Islamic republic as its official name. Iran stands aloof from the Sunni worlds given her ideological differences regarding the Islamic republic. Concerning the republic in Iran, Ruhollah Khomeini, the founder of *Welayet Faqih*, the Iranian regime, stated: “what we call an Islamic republic mean that both the condition of elections and execution of the

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rules in Iran is based on Islam, however, the choice is with the nation and the type of republic is also the same as the rest of the world.” However, it is clear that Islamic republic of Iran is not like any other republic in the world; rather it is a combination of the two types of the government, namely, a republic and a Wilayat. Most of the Iranian thinkers including Mohsen Kadivar, a writer and Abdul Karim Lahiji (2019), the drafting committee member of the constitution of Iran, believe that these republics and Wilayat are two different types of government and cannot be combined. Comparing these two governments, Kadivar (2008: 209) states,

These two governments – if the criteria of both shall be applied veritably (not nominally) – are not compatible but incommensurable. In other words, one should either believe in Welayet Sharia Faqih (the guardianship of the jurist) appointed by God for absolute guardianship on the people or believe in the elections of a president as a representative of the people. And these two cannot be combined if all the characters are observed.

Apart from these two countries, the other two countries that identified themselves as an “Islamic republic” are Mauritania and Afghanistan. However, unlike the three earlier countries, the idea of a republic and an Islamic republic was not conceptualised thoroughly in Afghanistan.

For the first time, Prime Minister Abdul Qudus Khan in 1920 enquired Sheikh ul Mashaikh Mujadidi and his brother, Noor ul Mashaikh and other Ulama of Qandahar by letter about the type of the state and its basis. Ghulam Mohammad Ghubar (1999: 804) claims that he accessed the response of the Ulama in which they compared four types of states, namely, autocratic, constitutional, republic and Bolshevik, with the Caliphate. According to them, the only acceptable

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form of the state based on Sharia and reason is the Caliphate which implements the divine law and politics. However, the response is very vague. It is not clear what is the basis of the above classification? How did they differentiate between constitutional and the republican state? What did they mean by a Bolshevik state? Did it refer to a communist state?

Seventy years later, with the fall of the leftist government in 1992, when the Islamists called Mujahedeen came into power, they adopted the term “Islamic State of Afghanistan,” instead of the republic. This simply meant a state whose sovereignty belongs to God and complies with Islamic law. Of course, that was anti-republic.

Ten years later in early 2002, through the process of crafting the new constitution, which included four stages – the Constitutional Drafting Commission, the Review Commission, public consultation, and Constitutional Jirga – three competing forms of the regime was proposed by the different constituents: Monarchy, Republic, and Islamic State. The proceedings of the above four stages are available at the National Archive of Afghanistan. However, throughout the process, members of the Constitutional Drafting Commission, the Review Commission and the Jirga either did not present any written argument in favour of or against the republican system or Islamic republic or the records are not available.

Only two Western think tanks, the Centre on International Cooperation (CIC), New York University and Rand established separate groups of international experts to provide consultation during the constitutional process of 2002-2004. On 28 January 2003, RAND

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organized a conference with a group of experts from different fields to provide consultation on the new constitution of Afghanistan. The proceeding of the conference was later published by Rand (Benard and Nina 2003). CIC also commissioned international experts to provide feedback on questions facing the constitutional commission. The commentaries were published under the title “Towards a New Constitution.” They are available at the CIC website as Afghanistan Constitutional Reform Resources. However, both of these documents do not entail any discussion around the republican system in Afghanistan. Nonetheless, it is clear that the republic as a type of state was taken for granted.

Almost all the debates during the crafting of new state and constitution were around Islam. For instance, at the Emergency Jirga for the establishment of the Transitional Government in 2002, Ayatullah Mohseni, a Shia Islamist leader, stated that the new government should strictly follow Sharia and should be called the “Transitional Islamic State of Afghanistan” rather than the “Transitional Administration of Afghanistan.” Only Gul Agha Sherzai, the governor, dared to oppose the proposal (Khalilzad 2016: 147).

Based on the Bonn Agreement, the Transitional government should establish a Constitutional Drafting Commission within the two months of its commencement as the first phase of crafting a new constitution. On 5 October 2002, a nine-member Constitutional Commission was established based on a decree of Hamid Karzai, Head of the Transitional Administration.

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*Table 2: Constitutional Drafting Commission*

<b>Members of Constitutional Drafting Commission</b>		
1	Nematullah Shahrani	Chair
2	Abdul Salam Azimi	Member
3	Musa Marufi	Member
4	Mohammad Qasim Fazily <sup>7</sup>	Member
5	Dr Rahim Sherzoi	Member
6	Mohammad Musa Ashari	Member
7	Mohammad Sarwar Danish	Member
8	Isifa Kakar	Member
9	Mukarama Akrami	Member

Source: Secretariat of the Constitutional Review Commission 2003

The members manifested two different ideological backgrounds. The first was Islamic law experts who were either graduate of Shaira faculty, Kabul University, Shia Madaras or Al-Azhar University. This included Shahrani, Azimi, Ashari and Danish. The second group was positive law experts who were graduates of Law Faculty, Kabul University and Western universities. However, both groups believed in the compatibility of international human rights values and Islam.

Four issues concerning the nature of state were contentious. These four issues determined whether the future state would be a republican to check the arbitrary use of power or non-republican.

These key principles included the following: (1) both horizontal and vertical separation of powers (whether the political branches of the state should be structured as a presidential, parliamentary, or a semi-

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<sup>7</sup> Fazily left the commission protesting the Karzai's appointing of Shahrani who did not have a constitutional law knowledge as head of the commission.

## CONCEPTUALISING “ISLAMIC REPUBLIC”

presidential system, and whether the state administration should be designed as a centralized state or a decentralized one); (2) the type of Islam that should influence society, and the degree of influence it should have on legislation; (3) the level of respect the state should give to fundamental rights; and finally, (4) the question of which, if any, judicial institutions should be entrusted with the power of judicial review (Pasarlay 2016: 183).

The commission tasked Azimi and Marufi to prepare preliminary drafts. They came up with two different formats. While Azimi’s draft entailed constitutional constraints such as semi-presidential system and constitutional court, Marufi’s draft suggested a strong presidential system without a constitutional court or juridical review. Azimi’s proposal was accepted by the majority including Shahrani, Ashari, Kakar and Akrami, as Marufi’s proposal was just supported by Rahim Sherzoy. While Tajiks and non-Pashtun members of the commission were in favour of the semi-presidential system to ensure checks and balances, Karzai and his supporters were in favour of a strong presidential system. Eventually, the commission agreed on a semi-presidential system and a constitutional court to undertake a judicial review. However, the negotiations on divisive issues unfolded an unwieldy compromise between the members and they deferred many divisive issues to the next step (Pasarlay 2016: 185).

According to Amin Ahmadi<sup>8</sup>, the Commission discussed the possibility of two systems: a constitutional monarchy and a republic. As the republic was the common modern system, the commission preferred the republic to the constitutional monarchy. However, the draft prepared

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<sup>8</sup> An informal conversation with the author.

## CONCEPTUALISING “ISLAMIC REPUBLIC”

named the state as “Republic”; the term “Islamic” was added by the chair of the commission, Nematullah Shahrani, while many members of the commission did not agree (Rubin 2004: 14). Finally, the Commission prepared and presented a draft within six months.

On 23 April 2003, as a part of the second phase of crafting the constitution, a thirty-five-member Review Commission was established to review the draft and conduct a public consultation.<sup>9</sup> The commission was divided into four working committees and one Executive Committee to unify the working committees’ proposals. As a result, four different opinions emerged.

On whether the nature of the state should be a republican or an Islamic republic, the records of the debates of the Constitutional Review Commission shows that the commission was divided among liberals and conservatives. The liberals including Parween, Majrooh, Gillani, Mirajuddin, Maroofi, Kamali, Ahmady, Afzal, and Patman agreed on the “republic.” They argued that an Islamic republic, on the one hand, creates a possibility of fundamentalist interpretation and application of Sharia law which may compromise fundamental rights of citizens, on the other hand, as Afghanistan is a Muslim country with Islamic values deeply defining the societal culture, there is no need to add the term Islamic. However, the conservatives including Amin Wiqad and Elahi favoured Islamic republic arguing that people fought for an Islamic state. Once the issue reached to the Executive Committee, the two other proposals including “Constitutional Monarchy” and “Islamic State”

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<sup>9</sup> Three members, Abdul Haq Walah, Likraj and Daoud Musa did not participate in the commission. Hence, the commission was a 32-member commission.

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*Table 3 Constitutional Review Commission*

<b>Constitutional Review Commission</b>		
1	Nematullah Shahrani	Chair
2	Abdul Salam Azimi	Deputy
3	Prof. Musa Marufi	Member
4	Dr Rahim Sherzoi	Member
5	Mohammad Musa Ashari	Member
6	Mohammad Sarwar Danish	Member
7	Dr Abdul Hai Elahi	Member
8	Mohammad Ashraf Rasoli	Member
9	Abdul Haq Walah	Member
10	Abdul Aziz Aziz	Member
11	Mohammad Tahir Borgai	Member
12	Mohammad Yaqub Wahidi	Member
13	Samshddin	Member
14	Mohammad Alam Ishaqzai	Member
15	Mohammad Amin Wiqad	Member
16	Mohammad Akram	Member
17	Nader Shah Nekyar	Member
18	Likraj	Member
19	Amina Afzali	Member
20	Fatima Gailani	Member
21	Sulaiman Baloch	Member
22	Mohammad Sediq Patman	Member
23	Shukria Barakzai	Member
24	Sediqa Balkhi	Member
25	Professor Ashim Kamali	Member
26	Parwin Momand	Member
27	Prof. M. Amin Ahmadi	Member
28	Mir Mohammad Afazl	Member
29	Abdul Hai Khurasani	Member
30	Parwin Ali Majroh	Member
31	Hakima Mashal	Member
32	Davod Musa	Member
33	Nader Ali Mahdawi	Member
34	Prof. M. Tahir Hashimi	Member
35	Mirajuddin	Member

Source: Secretariat of the Constitutional Review Commission 2003

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emerged. As the Executive Committee failed to resolve the controversy, the General Assembly meeting of the commission voted in the favour of “Islamic Republic” in its final draft.

Moreover, the contradictory clause<sup>10</sup> (article 3) in the primary draft based on the 1964 constitution which only referred to the “basic principles of the sacred religion of Islam” was further restricted by replacing it with “beliefs and provisions of Islam.” But gender equality, as well as the representation of women in democratic and governing bodies, were not opposed.

The Review Commission conducted a public consultation in May and June 2002. More than 150,000 people participated in 523 consultative sessions. The Commission collected more than 80,000 questionnaires, and over 6,000 written recommendations and 17,000 verbal recommendations (Secretariat of the Constitutional Review Commission 2003).

However, the questionnaire of public consultation was designed in a faulty way which not only limited the options of the respondents but also misled in some of the cases. For instance, in response to the question “what type of government do you want?” the four options provided to the respondents were: a monarchical system, a republican system, a presidential system and a parliamentary system. These four options are not mutually exclusive. A republican system may come in a presidential form or a parliamentary form. Hence the questions were not framed

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<sup>10</sup> This clause is usually referred to repugnancy clause which is a flawed translation of the term “munaziq”. The better alternatives are “contradictory” or “contravention.” For more information see Benard and Nina 2003: 3.

## CONCEPTUALISING “ISLAMIC REPUBLIC”

properly. Overall, the process was symbolic as “the results did little to ensure that the public’s views were incorporated in the final version of the draft.” The draft constitution was also not made public (Pasarlay 2016: 206).

During the public consultation, the people of Qandahar were more in favour of the monarchy as the last two dynasties of Sadozai and Mohammadzai came from Qandahar. So far, the monarchy camp has not been very strong. The Greater North and the West favoured a republican semi-presidential system.

At the 2003 Constitutional Assembly, the last stage of constitutional crafting, the type of the system was taken for granted as well. An in-depth deliberation did not take place around the concept of the Republic. The supporters of political Islam, stood firmly to make sure Islam should define the nature of the state. Of the prominent Islamists who were informally advising the constitutional making process daily was Abdrrab Rasul Sayaf and Fazal Hadi Shinwari, the Chief Justice of the Supreme Court (2001-2006).

The international donors did not oppose the adjective “Islamic” to be added before the term republic but they did convey their concern with regard to explicit reference to the term “Sharia” in the constitution. As a result of the bargains between the supporter of the Islamic nature of the state and international actors, the system was called the Islamic Republic.

To clarify what an Islamic Republic means, one can refer to the articles of the constitution. The first article states that “Afghanistan shall be an Islamic Republic.” The second, third, fourth and one hundred

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thirtieth articles clarify the principle of “Islamic Republic.” Article second states, “The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan.” The third article states, “No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.” This article is addressed to the legislature and the president which respectively ratify and sign statutory laws. It also means that “the Sharia constitutional clause would remain dormant until made effective by statutory law” (Abou El Fadl 2003: 16). This implies the need for a judicial review which is not clarified in the constitution.

However, article four states that “national sovereignty in Afghanistan shall belong to the nation, manifested directly and through its elected representatives.” Hence, the National Shura, Provincial Shura and the president, who are secular institutions and are directly elected by the people, are the authorities to make the laws. The religious scholars and Mullahs do not have a monopoly over law-making. This article implicitly acknowledges Mohammad Iqbal’s notion of Islamic Republic which was based on Ijma in the national assembly. As it was mentioned earlier, Iqbal argued against the notion of indispensable Caliphate in favour of a republic where sovereignty should be exercised by all the people, rather than a small group of clergies (Ulama).

Out of the three branches of the state, the only branch, which requires for an Islamic jurisprudence knowledge is the Judiciary that also not exclusive. Article 118 states that the member of the Supreme Court “shall have higher education in legal studies or Islamic jurisprudence.” Similarly, article 130 authorizes the judiciary to apply Sharia in those cases where the statutory law is absent. The article reads, “If there is no

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provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.”

Hence, the Islamic republic based on the constitution of Afghanistan is a polity where

- 1) the sovereignty belongs to the people;
- 2) the main source of legislation is the will of the people who elect their representative to make laws;
- 3) Sharia is not a direct and exclusive source of law-making but the law shall not contravene the tenets and provisions of Islam;
- 4) the clergy does not have a monopoly over the executive, legislature and judiciary but they can be part of it;
- 5) the clergy does not have a monopoly over judicial review or interpretation of laws.

It is clear that the Islamic republic was framed based on political bargaining between the Islamists and the international community, particularly the US, rather than a nationwide deliberation. Of course, the proliferation of international democratic and human rights norms that manifested in the multiple UN documents during the post-Cold War era was also determinant factors. The absent constituency was a domestic liberal democrat front to define and defend the democratic nature of the state.

The public consultation, ideally, should have generated a mass debate, and deliberation on the nature of the state. Afghanistan, devastated under the brutal and barbaric five-year rule of the Taliban, did not have a conducive environment for free and inclusive deliberation

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in the wake of the fall of the Taliban. The limited body of popular intellectuals who had fled the country either did not have a sense of solidarity or did not have the consciousness or did not have the opportunity to take a lead in generating a debate about the nature of the constitution and the state. In some cases, their views were not solicited or not allowed. And finally, the views collected by various means were not given any weight in the deliberations at the constituent Jirga.

The debate on the nature of republic and prospect of the Union generated in the late 18<sup>th</sup> and early 19<sup>th</sup> century among the political elites of new-born United States, such as the Federalist papers, never took place in Afghanistan. This not only shows the poverty of the indigenous political theory but *an ideational crisis* of the current republic in Afghanistan. Unfortunately, the three Constitutional Drafting Commission, Constitutional Review Commission and the Constitutional Jirga, lacked a visionary leader (see the list mentioned above) such as members of the 1963 Constitutional Committee, Mohammad Iqbal, Jamaluddin Afghani, Nehru, Gandhi, Hamilton or Madison. Because of such an ideational crisis, the term is now being contested by the Taliban.

To sum up, three points are worth mentioning. First, there are similarities between the western philosophy of republicanism and early rationalist Muslim thinkers. Second, the concept “Islamic republic” is a product of fundamentalist political Islam in the post-colonial era.

Third, the Islamic republic in the four mentioned countries do not constitute a common pattern. While all the four Islamic republics recognized Islam as an official religion of the state, they follow a divergent pattern in terms of the role of Sharia in legislation and role of

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clergy in law-making, executive and adjudication. Given that there is no institutionalised clergy in Islam, the Islamists in the postcolonial Muslim countries established the executive, legislature or judiciary institutions to be exclusively under the control of the clergies. This has manifested itself into different forms. For instance, the religious authority is granted an executive and legislative position, such as the Supreme Leader and the Councils of Guardianship and Experts, as in the case of Iran. The judges are granted the authority of judicial review to review the conformity of statutory law with the Islamic law, as in the case of Pakistan.

Unfortunately, there is a disconnect between the early rational Muslim thinkers and the contemporary republics in Iran and Pakistan. The adoption and practice of the Islamic republic are diverted of modernist Muslim thinkers such as Afghani and Iqbal. They did not propose an exclusive role for the clergy. The Islamic Republic in the mentioned countries are no more consistent with the main features of the republic.

Unlike Iran and Pakistan, the Islamic republic in Afghanistan is more progressive. Sharia is not the exclusive source of legislation and the clergy does not have a monopoly over application and interpretation of Islamic law. The Islamic republic in Afghanistan is consistent with Mutazilite’s notion of expediency.

## 4

### **A LONG WALK TO CONSTITUTIONALISM AND REPUBLIC**

Afghanistan experienced three constitutional movements which culminated in four democratisation waves.

1. The first constitutional movement: 1906 – 1911
2. The second constitutional movement: 1919- 1929
3. The third constitutional movement and the first wave of democratisation: 1949-1952
4. The second wave of democratisation: 1964- 1973
5. The third wave of democratisation: 1987-1992
6. The fourth wave of democratisation: 2002- ongoing

References to the origin of the democratic movement in Afghanistan and to those who advocated it are scant in literature. The primary source on this remains Ghulam M. Ghubar's *Afghanistan in the Course of History* (1999). Other historians including Vartan Gregorian, Louis Dupree, Abdul Hai Habibi and Hasan Kakar quote Ghubar in almost all of their works. The writing of many of the first generation of constitutionalists in Afghanistan is hardly available now. Ghubar also acknowledges how he did not have access to many of the documents needed. Similarly, Habibi wrote *The Constitutionalist Movement in*

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*Afghanistan* (1984) with only three sources at hand: his memories, Ghubar's book, and one newspaper article by Mir Qasim Khan.

The movement for democratisation in Afghanistan started parallel to efforts for the creation of an absolutist state. As Afghanistan was given shape as a modern state by colonial intervention, the measures taken by the monarchs characterised the state as an ultra-authoritarian state under Amir Abdur Rahman. When the French traveller, J. P. Ferrier, wrote his book in 1858, he characterised the political establishment in Afghanistan as "rather a military, aristocratic, and despotic republic, the dictator of which [was] established for life" (1858: 302).

Ironically, Amir Abdur Rahman claims to be the founder of a constitutional government. He writes in his memoir,

The foundation stone of *a Constitutional Government* has been laid by me; though the machinery of a Representative Government has not taken any practical shape as yet... I have made the following arrangement for making Afghanistan into a Constitutional Government. There are three kinds of representatives who assemble in my court and audience for consulting with me about the supplies for war material and various other state affairs. These three classes of people are called Sirdare (or aristocracy), Khawanin Mulki (Commons, or representatives of the people), and Mullahs (ecclesiastical heads and church representatives). The first of these take their seats in the court by hereditary right, subject to the approval of the sovereign. The second is elected from among the chiefs of the country who are chosen in the following manner. In every village or town there is one man elected by the citizens of that town...He...is called Malik or Arbab. These Malika or Arbabs elect another man from among them, but one of greater influence and greater importance in their province or constituency, whom they call their Khan (or chief). Our House of Commons is composed of these Khans. But in the matter of electing the Khans the final authority rests with the Sovereign who judges of the suitability of the election of these persons for the post of Khan by their merits, their position, their loyalty, their services or the services of their fathers: these facts are considered as well as the fact that the candidate has been already chosen by the people. The third party consists of

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the Khan Alum (the head of religion), the Kazis (ecclesiastical judges), Muftis (ecclesiastical head of churches and inferior courts), and Mullahs (the priests). The last-named people are the ecclesiastical heads and rise to the position of holding their seat in the Parliament by passing examinations in religious studies and in the laws of the country, and by serving in the religious departments (Rahman 1900: 187–189).

The usage of the Arabic words in the above paragraph indicates that Abdur Rahman was either influenced by or aware of the changes in the neighbouring country, particularly the Ottoman reform movement. For instance, he used the term “*Majlis Mabusan*”<sup>11</sup> which referred to the house of commons in Ottoman official terminology. However, it is very clear that the above paragraph was simply rhetoric and only paid lip service to republicanism. In practice, Abdur Rahman was an ultra-authoritarian. In the next paragraph, he takes a reverse stance:

This constitutional body has not yet attained the ability nor the education to qualify it for being entrusted with authority of any importance for giving sanction to Bills or Acts of the Government. But in time perhaps they will have such authority... I must strongly urge my sons and successors never to make themselves puppets in the hands of these representatives of constitutional Government... My sons and successors should not try to introduce reforms of any kind in such a hurry as to set the people against their ruler, and they must bear in mind that in establishing a Constitutional Government, introducing more lenient laws, and modelling education upon the system of Western universities, they must adopt all these gradually as the people become accustomed to the idea of modern innovations (Rahman 1900: 190).

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<sup>11</sup> مجلس مبعوثان

## A LONG WALK TO CONSTITUTIONALISM AND REPUBLIC

As the country was moving from an Absolutist state to the modern state (Rubin 1988), a nascent intellectual movement began for liberalisation. But the effort for democratisation did not happen in a linear manner. Rather it was shaped by many reverse waves.

While Samuel P. Huntington does not include Afghanistan in his analysis of waves of global democratization, Afghanistan is not an anomaly in Huntington's theory of waves of democracy per se. Without a doubt, Afghanistan has been a part of the "global democratic revolution" (1991: 12). The first wave of global democratization (1826–1925) led to limited suffrage for male citizens in the western world. The international factors were also, to some degree, determinants of democracy in Afghanistan; for instance, the Russian revolution of 1905, the Iranian revolution of 1906, and the Turkish revolution of 1908 had inspired the intellectuals in Afghanistan. In fact, the 1905 Russian revolution has had a tremendous positive impact on the upturn of democratisation in many Asian countries (Kurzman 2008). It is also important to note that democratisation in Afghanistan manifested multiple trends. It was (and has been) a mixture of an intellectual movement, top-down democratization, and snowballing effect.

As a result of international changes as well as the growing demand from within, Amir Habibullah, son and successor of Abdur Rahman, took some measures towards liberalisation. The efforts of a group of intellectuals in 1906, which led to nascent reforms, is known as the first constitutionalism movement. Eight intellectuals made an effort to publish the newspaper called *Siraj ul Akhbar* on 11 January 1906. The first movement consisted of three different circles: 1) court officials, 2)

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teachers at the Habibia High School, the first modern high education institution, and the Royal madrasa, and 3) the scattered individuals out of the court. These activists established a party called “National Secret Society” (Ghubar 1999: 717).

Gregorian argues that the constitutionalist movement was a militant minority that circulated a petition demanding a number of reforms, including the limitation of Amir’s authority and the “establishment of a constitutional assembly, founded on a national rather than a tribal base.” Habibullah’s “attempt to establish a limited consultative legislative body in 1904 had failed because the members were too ignorant for legislative work and needed 30 years of education to be fitted for the post” (Gregorian 1969: 212). As a result, Habibullah’s conception of constitutional government was not much different from that of his father – an unelected and irregular council of royal tribes, religious leaders and customary local khans called *Shura-e Daulat* (State Council).



Figure 2 Symbol of Constitutionalists

## A LONG WALK TO CONSTITUTIONALISM AND REPUBLIC

Hasan Kakar argues that, in this era, two different trends of liberalisation with two different visions took shape: a republican movement and a constitutional movement (Kakar 1978: 2). He does not elaborate on how the republican movement was different from the constitutional movement. However, it is understandable that both the movements had a nascent and preliminary notion of republic and constitutionalism. Ghubar says that in one of the circles of the party which was led by Taj Mohammad Khan Paghmani, Mir Qasim Khan, and Jawhar Shah Khan Qurbandi in 1909, a discussion on the change of regime was going on when one of the activists, Habibullah Tarzi said, “No Amir Habibullah! President Habibullah!” (1999: 717). They also decided to carry a pistol. As this news was leaked to Amir Habibullah, he considered the constitutionalists as a threat to the monarchy and attempted to suppress the movement. Except for a few who were excused, 37 core members of the party were executed (Ghubar 1999). After six years, in 1912, Amir Habibullah authorised reinitiating of *Siraj ul Akhbar* to Mahmud Tarzi. Gradually, the reformist intelligentsia also changed its strategy and adopted a much more radical approach. It aimed to launch a revolution from above. Finally, they managed to kill Habibullah who did not adhere to the demands of reformists in 1919.

The movement got more strength when Amanullah, son of the Amir Habibullah and one of the active members of the movement, came to power. Most of the constitutionalists were appointed within the apparatus of the state or engaged in enlightening the people by establishing newspapers. Intellectuals in this era worked to establish constitutionalism and persuade the Amir to embark on fundamental

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reforms, in what was called the second constitutionalism movement of Afghanistan. Amanullah, who adopted the title of “King” in 1926, enforced a number of reforms, which were not only radical, but also untimely and superficial, and hence unsuccessful. On the rights and liberties dimension, social reforms included liberalisations and recognition of rights of citizens and equality of gender stipulated in the first constitution drafted in 1923. These liberties and equalities were challenged by the violent uprising of the southern tribes, particularly the Mangal, which continued for nine months. Five years later, the members of a second Constitutional Assembly called by Amanullah in 1928 also opposed liberalisation. The representatives rejected the right to modern education for the girls, and limitations proposed for the age of marriage, 18 for girls and 20 for boys, as well as the unveiling of the women and outlawing of polygamy (Gregorian 1969: 255–262). There was a little progress on the separation of power and limitation of the King’s authority. Constitutional recognition was granted to the Parliament and State Council (*Shura-e Daulat*) which existed under Habibullah; however, the King had the ultimate legislative authority. The court also did not have independence and authority. For instance, in 1924, after the suppression of the Mangal revolution, Shah Amanullah ordered the execution of 54 rebels. Abdul Hadi Dawi, who was one of the constitutionalists, requested the Shah to allow the courts to decide about the rebels. In response, Amanullah replied, “Don’t you know that I am the grandson of Amir Abdur Rahman!” (Habibi 1984: 173). This period is characterised by the Historian Hasan Kakar as a quasi-constitutional

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monarchy (Kakar 1978: 198). This wave continued till the end of 1928 when the radical reforms faced a traditionalist uprising.

While Afghanistan had a weak state, foreign intervention and a reactionary response from the society brought a despotic and reactionary regime into power which was ruled through the family oligarchy of Nader Shah for the next three decades, which continuously and systematically suppressed the intellectuals (Akhgar 2007; Ghubar 1999). The 1931 constitution granted recognition for an elected parliament with certain authorities to approve main policies and the budget; however, the members were selected by the government rather than elected by the people in a free and fair election, for six rounds (Dupree 1973).

The reverse wave continued for twenty years till 1949 when the royal family was forced to undertake a slow move towards democratisation under both domestic and international pressures. These pressures included a national and global economic crisis as a result of World War II, along with post-colonial uprisings and the spread of socialism across the world (Ghubar 1999), as well as the effort of a number of educated young activists to promote liberalization (Dupree 1973). There is no doubt that the triumph of the Allies in World War II, which led to the second wave of global democratization between 1943 to 1962 (Huntington 1991), also influenced the political elites in Afghanistan. The new Prime Minister, Shah Mahmud, reluctantly agreed to adopt political reforms and liberalisation. Free and fair elections were conducted for Kabul municipality in 1948 and the seventh parliament in 1949. As a result, 40 to 50 elected representatives of the 171-member parliament were reformists and intellectuals (Dupree

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1973). Ratification of a code of media opened up society for the free media to emerge. The parliament also drafted an elections law and debated the need for a democratic constitution. For the first time, four political parties – Watan (homeland), Khalq (the people), Jawanan Bedar (awakened youth) and Itihad (Unity) – was established, which campaigned for socio-political rights.

I call this the third constitutional movement in Afghanistan, but because of the first free and fair elections, it can also be considered as the first wave of democratization in Afghanistan. While the government reluctantly liberalised, it was consciously observing the socio-political transformations. At the initial stage, in order to check the vocal critical voices in the opposition and civil society, for instance, the student union and political parties, it attempted to establish a pro-government party and encouraged the civil servants to join the party. This move did not bear much fruit as it could not mobilise public support. As this move failed, the government felt threatened assuming the liberals aim to overthrow the monarchy. Hence, after a short democratic interlude, ahead of the next parliamentary elections in 1952, the government smashed the liberals, cracked down free media, and prevented intellectuals from nominating themselves in the 19 April elections. The people boycotted elections and for the first time they came out for a mass demonstration. The government suppressed the demonstration and imprisoned many intellectuals, including the eighteen members of Watan and six members of the Khalq party. Those who agreed to cease anti-government activities were released but the rest who did not, remained in prison for almost a decade and finally were released when

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the new democracy was initiated in 1964. Observing this, Louis Dupree stated, “when Afghanistan achieves a democratic form of government, such ‘liberals’ as Dr. Abdur Rahman Mahmudi, who died three months after his release from prison, and Mir Ghulam Mohammad Ghubar...will probably be resurrected as martyrs” (1973: 497). However, Afghanistan still needs to acknowledge and remember these democracy activists who sacrificed their lives for constitutionalism and democracy.<sup>12</sup> On the other hand, some other critics calls this period as “crowned democracy.”

Nonetheless, Afghanistan was governed by an authoritarian monarchy from 1952 to 1964. The social and intellectual efforts for democratization bore fruit after 1964 with the adoption of constitutionalism under the leadership of Prime Minister Yousuf (Dupree 1973). The struggles of the third-generation constitutionalists, finally, led to the ratification of the new Constitution in 1964, which was much more democratic than the previous ones (Saikal 2004). The new constitution facilitated a free public space for deliberation and debate. The political rallies, campaigns, the establishment of different social groups’ associations (such as women, students and teachers), and the publication of journals and newspapers, created a window for the democratic public sphere. Two relatively free parliamentary elections

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<sup>12</sup> On 21 April 2020, I made an appeal through the social media post that in order to honour the memory and struggles of these intellectuals and activists, 19 April should be recognized as the Day of Democracy and Constitutionalism in Afghanistan and that a memorial should be built in the Parliament of Afghanistan. Naheed Farid, the Head of the Human Right, Civil Society and Women Affairs Commission of the House of Representatives welcomed this call, presented the request in the Parliament and collected signature of the MPs for the support of the same cause. However, the demand is yet to be materialized.

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were conducted in 1965 and 1969. This could be called the second wave of democratization in Afghanistan. However, public perception concerning democracy was not mature enough. According to Dupree, “most indicated preference for a guided democracy led by benevolent leaders” (Dupree 1973: 564). Needless to say, that “*a guided democracy led by benevolent leaders*” is the same as authoritarianism.

Both 1949 and 1963 democratisations resonate what O’Donnell and Schmitter argue about importance of divisions within the authoritarian regime. They argue “there is no transition whose beginning is not the consequence – direct or indirect – of important divisions within the authoritarian regime itself. In other words, no transition to democracy could be forced solely by an opposition facing a cohesive, undivided authoritarian regime” (O’Donnell and Schmitter cited in Teorall 2010: 20). In both the transitions, the division within the royal family allowed the move towards democratization.

With the second global reverse wave (1960–1975), which led to the establishment of military rule in most South American States and the reversion of a number of young Asian democracies, Afghanistan also had its second reverse wave of democratisation from 1973 with the coup of Mohammad Daoud and the establishment of an authoritarian regime by him which continued until 1978. Daoud named his regime a “republic” and described the parliamentary democracy of 1964–1973 as “anarchy” (Zwandun 1973a: 7). The new regime, in its first decree, annulled the 1964 constitution, annulled the parliament, and banned political parties, associations and newspapers. It also transferred legislative authority to the executive branch and the President. The third

decree annulled the supreme court and transferred all of its authority to the Ministry of Justice (Zwandun 1973b: 5). The well-known historian, Seddiq Farhang (1984) called it a monarchical republic (*jumhuri shahhana*).<sup>13</sup> Under such suppression, some of the poets praised the establishment of the Republic in the well-known weekly journal published by the Ministry of Information and Culture, *Zwandun*.<sup>14</sup>

<sup>13</sup> جمهوری شاهانه داود

<sup>14</sup> Following are the two samples of Farsi poetry. The first one is by the well-known Farsi poet Mohammad Asif Fektrat Hrawai and the second is by Nasir Tahori Herawi.

می بیداری

بریز ساقی سیمین به نام جمهوری  
 شراب ناب که طی شد زمان مهجوری  
 بریز باده مستی و شور و بیداری  
 که بیش از این نتوان بود غرق مخموری  
 در آستان تو فکر بهشت کی داریم  
 بهشت کوی تو باشد تو نازنین حوری  
 بیا که بلبل طبعم سرود مستی خواند  
 ز شوق بوی دل انگیزت ای گل سوری  
 مرا به است شرنگ سفال آزادی  
 ز آب زندگی از جام های فغفوری  
 خوش آمدی ولی این دیر آمدن ز چه بود؟  
 ره وصال نپنداشتم به این دوری  
 به جمله هموطنان تهنیت بگو (فکرت)  
 مبارکست به کشور نظام جمهوری  
 (Herawi 1973a: 49)

پیام جمهوری

بریز باده عشرت ز جام جمهوری  
 که گشت زنده ز داوود نام جمهوری  
 دلا! تو شاد بزی کز طلوع مهر امید:  
 رسید صبح خوش نقره فام جمهوری  
 شدیم زنده دل اینک ز لحن داوودی  
 شنیده ایم از و تا پیام جمهوری  
 کنون دگر همگی زندگی ز سر گیریم  
 دل رمیده ما گشت رام جمهوری

## A LONG WALK TO CONSTITUTIONALISM AND REPUBLIC

Ahmad Zahir, the well-known singer, sung three songs for the new republic. These poems and songs are nothing but an encomium. There was no credible work to conceptualise what a Republic means in this era.

With the communist “revolution from above,” known as the Saur revolution, which established the Communist rule from 1978 to 1992, the state went into fragmentation. The failure of the state was evident in the reduction of size and capacity of both the military and civil apparatus of the state. This reduction was a result of the loss of personnel, which was either as a result of the high purge of the state by the radical faction of the communists, or desertion and exodus of personnel from the country into exile. In the 20 months of Khalqi rule, the regime executed, arrested, and purged the army, police and security forces. As Babrak Karmal became the President, he spent much of his time rebuilding and strengthening state’s civilian and the military apparatus with the Soviet support (Halliday and Tanin 1998: 1360–1364).

According to Huntington, 30 countries had a transition to democracy during the third wave of democratisation (1974–1990). Coinciding with this wave, a third slow and unsuccessful wave of Afghanistan democratisation took place in 1987. The post-Karmal government was mandated for a reconciliation policy. Based on that policy, the regime aimed to open up politically. On 30 November 1987,

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ازین نظام نوین جان و دل سلامت باد  
سلام باد به مردم، سلام جمهوری  
طهموری از دل و جان، باز تهنیت گوید:  
به هر گرسنه و هر تشنه کام جمهوری

(Herawi 1973: 49)

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the Constitutional Assembly ratified a liberal constitution that recognised fundamental rights and liberties and guaranteed a multi-party democracy. While the constitution recognised the multi-party system (article 5), it gave exclusive recognition to the People's Democratic Party of Afghanistan (PDPA) in the preamble. Based on the new constitution, a parliamentary "election" was conducted in 1988, in which the PDPA and a number of recognised left-wing parties won the seats. The incumbent government left the 50 seats out of 234 seats of the House of Representatives to the Mujahedeen insurgents as a peace offer and political accommodation. However, the insurgents rejected the offer and boycotted the elections.

The Second Constitutional Assembly was conducted to amend the 1987 constitution, two and a half years later, in May 1990, which removed the name of PDPA and the National Front from the constitution. The new Constitution was more progressive compared to that of the 1964 Constitution in many aspects. First, unlike the 1964 Constitution, it acknowledged the first constitutional movement (in the Preface). It also recognised Afghanistan as a multi-national state (article 13). The constitution recognised the civil and the political rights (chapter three), private property (article 19), and confirmed the responsibility of the state in terms of social justice and the provision of universal health care and social security (article 57). Critics argue that these remained only on paper. In practice, the government could not gain the trust of the political and military opposition.<sup>15</sup>

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<sup>15</sup> For instance, the letters exchanged between President Najib and few intellectuals in the West including Hasan Kakar, and famous guerrilla fighter and National Hero of

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The duration of this third wave of democracy (even if on paper) was not long. It ended with the fall of the government two years later in April 1992. The intra-Mujahedeen agreement to establish an interim government was violated by the few radical Mujahedeen factions, including the Hezb-e Islami of Gulbuddin Hekmatyar. This phase of turmoil did not allow the Mujahedeen government led by Sebghatullah Mujadidi and later by President Burhanuddin Rabbani to stabilise political order. On the contrary, the emergence of the Taliban as a result of the continued war in the capital and the countryside once again led to state fragmentation. It is important to note that the forces of globalization also contributed to the further weakening of the state. As the state was not able to deliver order, security or basic services, alternative actors and institutions emerged to take place of the state. These actors were not only the militias, warlords, and organised criminal networks, but also transnational societal or familial networks and tribes. For instance, Conrad Schetter characterised the Taliban as “the globalised tribe” in the context, where the order is not only “rooted in local tribal structures, but increasingly embedded in regional and even global networks” (Schetter quoted in Boege et al. 2008: 9).

After a long three-decade gap of the communist regime, the Islamic State of the Mujahideen, the Taliban extremism, and Civil War, Afghanistan opted back for the democratic system of governance post-2001. Despite the turbulent and fraudulent elections, Afghanistan enjoyed democratic processes such as the right to dissent, free media,

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Afghanistan, Ahmad Shah Massoud shows the lowest trust of the opposition of the liberalisation efforts of the government.

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and evolving civil society. This phase could be called Afghanistan's fourth wave of democratisation. However, there is growing discontent about the conduct of the government. Weak governance, warlordism, the Taliban terrorism, the self-perpetuating political elite, and a centralised system have limited the influence of ordinary citizenries on decision making at the local/sub-national and national level, contributed to this discontent. The rise of the "strong man" has posed another challenge to the new republic. It is crucial to ask what are the factors which corrupted the republic and allowed the politicians, with authoritarian and jingoistic tendencies to emerge.

The current political order is based on the agreement that was concluded at the Bonn conference, which was subsequently enshrined in the Constitution of 2004. The 2001 Bonn Agreement functioned as a pact to re-establish a social contract between the people of Afghanistan and the state. It drew a roadmap for a post-conflict settlement that included an interim administration, transitional administration, the drafting of a new constitution, and finally presidential and parliamentary elections.

The Bonn Agreement laid down the foundation for what is called "post-civil war democratization." According to Leonard Wantchekon (2004), unlike the classic political theories which preclude the possibility of democratization from a civil war context, recent empirical cases from Africa and America such as El Salvador, Guatemala, Nicaragua, and Mozambique indicate that civil war can give rise to post-civil war democratization. Wantchekon lays down several characteristics for this form of democratisation. According to him, post-

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civil war democratisation is motivated by the desire for political order, not popular representation and political accountability. While these claims look contradictory, the post-civil war democracy aims to end the war and anarchy and to prevent elites from reverting to war. Unlike the case of transition from authoritarianism to democracy, the case of transition from war to democracy comes against the backdrop of a weak civil society. In fact, democracy in the latter case is the outcome of a peace agreement. In this case, democracy is used as an institutional response to end the war and political violence. The transitional phase entails disarmament and demobilization of the predatory warring factions, and the electoral process is utilised as a tool for establishing political order. While post-authoritarian democratization is based on Lockean, Hamiltonian and Madisonian notions of democracy, post-civil war democracy is in accordance with the Hobbesian notion of order. This means that post-civil war democracy is often a minimalist democracy derived from the need for order.

The theory is based on a rational choice model which characterises actors and parties in the conflict as rational and economically-driven groups. According to this theory, the chances that conflict would end in a democracy depend on the level of parties' dependence on the conflict, and citizens' investment and/or the level of financial independence, natural resource, or foreign donation and sanctuaries.

Even though Wantchekon did not talk about the case of Afghanistan in his theory of post-civil war democratization, the Bonn Agreement functioned as a roadmap for democratization in Afghanistan. It was an effort to rebuild the social contract amongst different parties to

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the conflict. However, there are certain nuances in the case of the Afghanistan civil war. The two warring parties in the late 1990s war were the Rabbani government, which was a coalition of several factions under the title United Front for the Salvation of Afghanistan, and the Taliban. The equilibrium of the conflict did not lead to a hurting stalemate so that one or both of the parties to the conflict considered negotiating a peace agreement. The Taliban was heavily sponsored by drug traffickers, and the external actors, such as Al Qaida and Pakistan (Bhatty and Hoffman 2001). This conflict was settled by the intervention of an external actor, namely the US, as a great power. The immediate factor in changing the scenario was the US attack on the Taliban, which marked the fourth wave of democratization in Afghanistan as one of post-conflict/post-civil war democratization. The US intervention in Afghanistan helped the United Front's resistance against the Taliban. The democratization process was not normal and soft; rather it was followed by war and the engagement of large numbers of state and international organizations. The UN played a leading role in the peacebuilding of Afghanistan. In 2001, the UN-sponsored the Bonn Conference and took part in building the political system of Afghanistan. Suhrke says, "the UN launched a visibly internationalised democratization process," after which foreign experts and advisors came to implement the Bonn process (2008: 634).

The next section will discuss how this "internationalised democratization process" failed to create a contestatory democracy needed for a republic.

## THE VICIOUS REPUBLIC

Fourteen years ago, the *Afghanistan National Development Strategy* envisioned 2020 Afghanistan as following

By 1400 (2020) we envisage a state in which institutions are more accountable and responsive to poor people, strengthening their participation in the political process and in local decision-making regardless of gender or social status. We will continue to mature as a stable Islamic constitutional democracy with regular national and provincial elections that are peaceful and fair (P.15).

Fourteen years later, not only are these promises are not fulfilled but what has been minimally achieved is also under threat. What we have now is a vicious republic, which is diverted from the core values and principles of civic republicanism by the behaviour and mischiefs of political elites and their international supporters. The term “republic” is used and misused as rhetoric for the sake of consolidating political power and immediate electoral benefits.

This section examines the institutional and behavioural practice of the republic in Afghanistan based on the four features derived from the philosophical inquiry, in the first section, namely, constitutional constraints, contestatory democracy, civic virtue, and participatory citizenship. This section suggests that the lack of these four qualities has

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caused a *structural, functional and normative crisis*, which eventually created a vicious republic in Afghanistan.

### **1. Constitutional constraints: rule of law, separation of power and counter-majoritarianism**

On the constitutional dimension, Pettit devises three conditions, “empire of law,” dispersion or separation of powers, and counter-majoritarianism. Ashraf Ghani has systematically violated these constitutional constraints. By misusing and abusing the authority granted to the President, he undermined the rule of law, violated the separation of powers, and ruled by majoritarianism.<sup>16</sup> To substantiate the above-mentioned points, I identify cases of the usurpation of power.

The first and most important case is how authority has been centralised in *the office of the president*. The 2004 Constitution creates a strong executive branch where power is greatly centralised, heavily skewed, and firmly titled in favour of a powerful executive at the expense of the judiciary and the legislature (Hamidi & Jayakody 2015).

The current centralised state is the legacy of the earlier monarchic despotism of early twentieth century, the democratic constitution of 1964, communist centralism and current presidential system. First, the 2004 constitution was developed based on the 1964 constitution. Following the 1964 constitution, the powers of both the king and the

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<sup>16</sup> While the post-2014 National Unity Government (NUG) was formed based on an agreement between the two incumbent presidential candidates, Ashraf Ghani and Abdullah Abdullah, Ghani did not respect the agreement and continually invoked his authority based on article 64 of the constitution as if he were a constitutionally-elected president. As the 2014 elections were rigged, Ghani always felt insecure; hence, he repetitively invoked the point that he was a democratically-elected president.

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prime minister have been given to the president. Therefore, the president is both the head of state (Art. 60) and the head of government (Art. 64) which allows him to be both the king and the kingmaker and to operate unchecked which is anti-republic. Unlike the US Constitution that ties the Presidents' powers unequivocally to his/her position as the head of the executive branch, the Afghanistan Constitution transcended deliberately the classical power division to assign a comprehensive authority to the President. Second, with the gradual rise of the Soviet role in Afghanistan, particularly post Second World War, Soviet state building features were copied by Prime Minister Daoud. According to Jennifer Murtazashvili (2019: 60), "the system of public financial management, and the bureaucracy were very similar in design to their Soviet counterparts... Once the Soviets invaded, the centralised Soviet imprint on Afghan bureaucracy and government became heavier."

Law on Basic Organization of the State (Organic Law) was drafted and approved during the communist administration. Both Karzai and Ghani refused to process this law. The incompetent parliament also did not try to re-draft and pass this law. One of these institutions created under President Karmal's administration was the Administrative Office of the President. It consisted of a number of advisors for whom the ministries were reporting. This institution was also transplanted in the post-2001 political order. While its widespread administrative and political authority is unconstitutional, Ghani has elevated its administrative and political status above the ministries. Finally, the US is of the rare cases of the presidential system which influenced both micro-organizational design and macro-political system in Afghanistan.

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For instance, the Office of National Security Council has been copied from the US. While the mentioned agency does not have any constitutional authority, Ghani has given it extra-constitutional authorities. He has also established a number of high councils in the presidential palace. Hence, the current centralization under Ghani is more than centralization in the executive branch, rather one can characterise it as centralization in the office of the president which consists of the newly created high councils, National Security Council, Administrative Office of the President and the office of the first lady. One of the reasons that powers are vested to these agencies is that these agencies are not accountable to anyone. Their recruitment process bypasses the Independent Civil Service Commission. There is a verbal understanding that courts and prosecutors are not allowed to look into cases related to them.

John M. Carey argues that there are three types of legislative power that a president can enjoy: decree, agenda-setting, and veto authority (Carey 2008: 103). Similarly, Arend Lijphart argues that there are three sources of power for a president in a presidential system.

One is the power of presidents defined in constitutions, consisting of "reactive powers," especially presidential veto power, and "proactive powers," especially the ability to legislate by decree in certain areas...The second source of power is the strength and cohesion of presidents' parties in the legislature. Third, presidents derive considerable strength from their direct popular election and the fact that they can claim that they (and their vice presidents, if any) are the only public officials elected by the people as a whole (Lijphart 1999: 128).

Like the US and Colombian Presidents, the President of Afghanistan has considerable constitutional power. The 2004

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Constitution grants all three legislative powers mentioned by Lijphart to the president. First, the president is provided with leverage over the legislature by veto. While the constitution is not clear whether the veto is package veto to item veto, in practice the president has used item veto which enables him to remove the unfavourable items from the law while keeping his favoured items without needing to compromise with the legislature. It is important to note that in the presidential democracies item veto power is not so common. The presidents in 15 constitutions among the 23 Latin American countries are not provided with item vetoes (Mobasher 2019).

Besides, a quorum of two-thirds of the House of Representatives to override a presidential veto (2004 Constitution, Art. 94) is a high threshold to be fulfilled. Afghanistan is one of the very few democracies where the presidential veto can be overridden only by a supermajority of the house of representatives. While Venezuela requires a threshold of a simple majority for veto overriding, an absolute majority of present members in Uruguay, an absolute majority in Nicaragua, and the absolute majority of joined houses in Colombia and Brazil would be required in those states. Also, the presidents in Sri Lanka and Indonesia have no veto powers or only a simple majority of their legislatures can reverse the veto (Carey 2008: 107). Thus, to maintain the balance of power, the Constitution of Afghanistan needs reform either by abolishing the veto power of the President or decreasing the threshold for the veto override.

Additionally, the Constitution vested strong legislative decree authority to the President under Article 79. Legislative decrees, under

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Article 79, are enacted in times of “immediate need” and during the recess of the parliament. And all enacted decrees are required to be tabled before the Parliament within one month following the legislature’s return. The legislature will either approve or reject the enacted decree. In practice, apart from this authority, Ghani has issued decrees (*Farman*), orders (*hokum*) and verbal directions (*hidayat shafay*). He has also established the Presidential Follow Up Bureau in each administrative body to follow up his orders and verbal directions. Hence, Ghani’s style of governance includes rule by decrees. There is no source which could give the exact number of decrees and orders passed by Ghani during his tenure between the years 2014 to 2020. Several contradictions can be seen within the government websites regarding the number of decrees passed by the President. The website of the Office of Chief of Staff to the President documents orders and decrees separately. There are around 173 orders/ordinance and 92 decrees on the website from September 2014 to July 2019 (Orders 2020; Decrees 2020). On the contrary, the Office of the President of Afghanistan website documents a combined 185 decrees and orders/ordinance from 29 September 2014 till June 2020 (Decrees and Orders 2020). However, a 27 September 2018 report by the ToloNews demonstrated that only 76 decrees passed by Ghani from 2014 till 2018, were presented to the parliament for approval. In another report by ToloNews on 20 September 2020, Committee on the legislation of the House of Representatives of the Parliament stated that between 2014 to 2019, the President issued 88 unconstitutional decrees. These include the establishment of new ministries such as State Ministry for Peace, State

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Ministry for Disaster Management and Humanitarian Affairs, State Ministry for Human Rights and International Relations,<sup>17</sup> and the dismembering of other institutions such as the General Directorate of Prisons and Detention Centers and Civil Registration Authority from the Ministry of Interior Affairs, and the dismemberment of Ministry of Finance, Ministry of Mines and Petroleum and many more cases. Hence, it is difficult to confirm the exact number of decrees passed by Ghani during his term in office since inconsistent figures have been presented in government websites and other sources. These decrees include enacting of new laws, establishing of new institutions, dismemberment of ministries, transfer of power to the presidential palace and many more.

Former President Hamid Karzai also exploited his power of passing the decrees and arbitrary ordinances. For instance, in 2014, a group of 29 local, as well as international civil society organizations, wrote a letter to Karzai requesting that instead of passing a decree, the President should strive to ensure that changes in the mining law were brought about through normal procedures of law-making (Global Witness 2014). Similarly, Hamidi and Jayakody (2015) are of the view that during the one decade (2005 to 2015), Afghanistan experienced the excessive passage of presidential decrees. Concisely, it can be said that Hamid Karzai was not far behind Ghani in the race to pass presidential decrees.

These authorities have enabled presidents to bypass the legislature and make arbitrary ordinances. Even in the cases where the parliament

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<sup>17</sup> President Karzai also established State Ministry for Parliamentary Affairs by a presidential decree.

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has exercised its constitutional authorities, the president and executive as tried to ignore it. Despite the demand of the parliament, the president has not been introducing the nominated ministers and other agencies for a vote of confidence to parliament. While the parliament has wielded its power to check ministry appointments, presidents have been overriding Parliament's no-confidence votes against ministers either through reappointing them as "acting ministers" or referring the no-confidence votes to the judiciary and marking them unconstitutional. On 19 December 2020, in an interview with Radio Azadi with respect to the two rejected candidate ministers by the parliament, Rula Ghani, the first lady of Afghanistan, stated that "whether the parliament rejected or accepted a ministry they will stay in their position." This is a blatant contempt to the separation of powers and rule of law.

The international donor community has also been undermining the authority of the parliament. In a most recent case, despite the house of representative's rejection of the cabinet proposed project of COVID-19 food relief program for the poor called *dasterkhani milli*, President insisted on his own stance. The project was funded by the World Bank worth 240 million dollars.

It is evident that such unlimited power has undermined the separation of powers, and checks and balances. A comparative study of other countries also shows that such unchecked power can lead to an institutional crisis. Carey argues that "where constitutions provide presidents with the decree, the use of this authority to avoid negotiation with legislative opponents has frequently been the subject of conflict between the branches, which in some cases has evolved into regime

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crisis” (2008: 105). To restore checks and balances, the veto-override threshold of the *House of Representatives* should be reduced to a simple majority to limit the president’s legislative power. Also, certain items, on which the President would have legislative power, should be reduced through constitutional reform to limit the President’s legislative decree authority.

One of the crucial institutions mandated to oversee the implementation of the constitution and supervise the separation of powers and checks and balances in a republic is a constitutional court or council. The constitutional court or council tends to be an independent agency which does not come under the president’s authority. As Arend Lijphart puts forward, judicial reviews to examine the constitutionality of the decisions and laws is a key characteristic of a consensual model of democracy which suits a multicultural and pluralistic society. The first draft of the constitution in 2003, proposed a constitutional court for Afghanistan. However, the final draft replaced the court with a commission titled The Independent Commission for Supervision of the Implementation of the Constitution (ICSIC). The Commission was established with a long delay in 2010. While the philosophy of establishing the Commission was to interpret the constitution, Karzai vetoed the Commission’s law ratified by the parliament which recognized ICSIC authority to interpret the constitution. Ghani also contested this authority of the Commission. In November 2020, the Law Committee of the Cabinet drafted a law to grant the authority to interpret the constitution to the Supreme Court. This controversy came as a result of the ambiguity in Article 121 of the constitution. While Article 157 of

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the constitution stipulates the establishment of the Commission, Article 121 gives the authority to interpret the statutory laws to the Supreme Court. Both Karzai and Ghani systematically weakened the Commission. For instance, in 2017, Ghani passed a decree to establish a commission to evaluate the performance of ICSIC. This happened as the commission raised scepticism about the constitutionality of the government's peace deal with Gulbuddin Hekmatyar. Although sub-clause 20 of article 64 of the constitution grants the President the authority to establish commissions, it does not authorise him to establish a commission to oversee the performance of an independent commission. ICSIC has been weakened further to the extent that it cannot identify, document, examine or denounce unconstitutional acts of the government. The current commission is a weak body and cannot hold the president and other government agencies accountable for unconstitutional acts and decisions. It can, therefore, be said that Ghani usurped the power of establishing commissions to cover his unconstitutional acts.

The judiciary is not only weak but does not have independence. The constitution has given strange power to the president in regard to the judiciary. President cherry picks members of High Council of Judiciary and the attorney general, as a result of which the Chief Justices and the attorney general have never been, respectively, a judge or a prosecutor for a single day in their previous life. The president also controls financial and administrative affairs of both the courts and the prosecution offices, which is a breach of checks and balances.

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The President has systematically interfered in the affairs of the judiciary and misused his authority. For instance, in 2019, Ghani ordered the release of Khalilullah Ferozi, ex-CEO of Kabul Bank, who was convicted for fraud in the bank's scandal. The decree stated that Ferozi would be released as a result of his poor health condition. However, the team assigned to look into the matter claimed that Ferozi's release was not legal, and he should either be held in the prison or hospital. The release of Ferozi close to the elections suggested that there had been a deal between Ferzoi and Ghani.

Such unchecked power allowed Ghani to routinely disband ministries and agencies, and transfer their responsibilities to the President's Office by creating ad hoc commissions and committees or by giving extraordinary authority to unelected and unaccountable bodies such as the Administrative Office of the Presidential Palace, Chief of Staff of the President, National Security Council and other high councils. Usurpation of power has been common in South-Central American countries. Afghanistan also resembles most of these presidential systems. By appointing his associates or followers, Ghani has formed a government of cronies. By irregular, inconsistent and political dismemberment, dismantling, and reshaping of many agencies and administrations, he has contributed to the failure of the state.<sup>18</sup> This is

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<sup>18</sup> As his first decree, on 29 September 2014, Ghani merged President's Office of Chief of Staff with Office of Administrative Affairs and Council of Ministers (Decree 2014). Later, in July 2017 he reversed the design and separated the two agencies again (Decree 2017). In December 2018, Ghani ordered the formation of the "Ministry of Transport" by merging the Ministry of Transportation with Railway Authority, Ministry of Public Works, and Traffic Directorate of the Ministry of Interior. Similarly, in his second term in office, he decided to remove some key constituent parts of the Ministry of Finance (MoF) and put it under his direct control

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because of the lack of the Law on Basic Structures of the Government. If this law had been there, the President would not have been able to make such changes unless through this law. Both Ghani and Karzai did not want to place this small check on their power.

Ghani's record of politics resembles that of Boris Yeltsin of Russia and Lyndon Johnson and Richard Nixon of the US. The earlier is characterised as a "*super-presidency*" and the latter is characterised as an "*imperial presidency*."<sup>19</sup> Yeltsin discredited the parliament, disassembled many local governments and dismantled the constitutional court. As Fareed Zakaria (2003) said with respect to Yeltsin, one can say the same about Ghani: that he might be a liberal democrat at heart, but his policies and decisions have created a "super-presidency" and corruption of the presidency and its premises. Similarly, Lijphart argued that "under Presidents Lyndon Johnson and Richard Nixon, an "imperial presidency" tended to overshadow Congress" (Lijphart 1999: 129). Such tendencies in the US have existed from time to time, especially now with Trump, but it has been checked by other branches and public outcry. However, these checks do not exist in Afghanistan, so far. As a result, unconstitutionality has been rife under Ghani. The lack of constitutional constraints and separation of powers is a clear sign of the *structural* and *functional* crisis of the republic in Afghanistan.

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in the Presidential Office (Byrd 2020). As the MoF regulates aid inflows and tax collection, this action of the President can be seen as a usurpation of power since bringing it under his own control, the President would ensure great power as besides holding the sword (by being commander-in-chief of the armed forces), he would have substantial control over the purse (the money). Later, under the pressure of the international community and the US, he reversed his decision

<sup>19</sup> Critics may say that such a suggestion is unfair to the others.

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Therefore, to prevent the unchecked power of the president and institutionalise constitutional constraints, the arranged system should be reformed to check the president. In order to restore the principle of separation of powers, the constitution needs to be amended to abolish or reduce some legislative powers of the president, empower the judiciary and recognise an independent court/commission to interpret the constitution.

### **2. Contestatory democracy**

The second dimension of the republic, according to Pettit, is a contestatory democracy. Unlike a consent-based democracy, a contestatory democracy is not just exclusively based on the election but debate-based and democratically controlled decision-making process and trust between the state and the citizens.

As discussed in the previous section, post-2001 democracy in Afghanistan is a product of the “internationalized democratization process” that, rather than fostering contestatory democracy, nurtured a presidential democracy where the judiciary and the legislature were highly marginalised. During Ghani’s tenure, the inability of the judiciary, at least, to display its existence does not need any evidence. Needless to say that both the National Shura and the court system has equally been corrupt.

Furthermore, rather than trust, the bases of the government has been manufacturing consent. To manufacture consent, this presidential democracy is aligned with traditional unconstitutional bodies such as traditional assemblies, the Jirga. A Jirga was originally a traditional and

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customary tribal or village institution but Afghan nationalism has appropriated the Jirga as a national institution by calling the local chiefs and Khans on special occasions and has portrayed the Jirga as a symbol of consensual democracy. Of course, the Jirgas have been a manipulative mechanism for whitewashing failed policy decisions and do not meet the three criteria stated by Pettit for a contestatory democracy (1) the existence of a basis for contestation; (2) the existence of a voice for contestation; and (3) the existence of a forum for contestation. The Jirga is usually a bargaining-based form of decision making. Interests and ideas are usually predefined and usually manipulated by the state. It is also based on exclusions. The way Belqis Roshan was unceremoniously ejected from the 2020 consultative Jirga is one of the best examples of this phenomenon. And finally, as a Jirga emphasises consensus, there is less room for contestation and contradiction.

Critics argue that democracy is not a suitable model for the post-conflict states because it politicises and legitimises the wartime identities and legacies, and lacks necessary institutional infrastructure for governance (Marjanovic 2005: 3). Social dynamics and the distribution of power in a conflictual society are different from those in a peaceful society. A lack of state effectiveness and minimal political order as a precondition of democracy makes these societies vulnerable. So, the emphasis should not only be on the empowerment of citizenries and individuals to have their rights and freedoms but also on the rebuilding of the state apparatus to establish political institutions and order (Diamond 2006). Otherwise, the rapid democratization will have reverse effects. What Volker Boege, Anne Brown, Kevin Clements and

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Anna Nolan (2008: 12) argued in the context of East Timor, can explain the case of Afghanistan as well:

Efforts to rapidly introduce liberal governance norms and structures without paying attention to how they interact with local customary values have contributed to the erosion of institutions and cultural values underpinning order... As a consequence, the notion of 'democracy' has become widely identified with 'conflict between competing factions of the political elite' and with 'top-down imposition of values.

Of course, post-2001 democratization was a part of maximalist liberal peacebuilding which aimed for good governance, market development and economic liberalization (Mukhopadhyay 2014). Afghanistan became a complex of pacification, democratization, reconstruction of society, and rebuilding state. The problem, according to Neil Robinson, is that accomplishing democratization, simultaneous to state-building and market development is impossible. He says,

[t]he development of state, democratic and market development have historically been eased by their non-simultaneous development; where the processes run together the risk is that making a decision on one of them may pervert the others... Making decisions on the market might detract from the development of democracy since decisions about allocations of property alter the social balance of power; making a decision about the social basis of the state can deform democracy since it influences citizenship and rights to participation and may create exclusion rather than universal citizenship; making decisions about democratic institutions can create anti-market populism or majorities that are not interested in market-supporting institutions such as property rights (2007: 14).

Unfortunately, Afghanistan followed the same failed path. The illiberal technocrat diaspora coming from the West reinforced all these three

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processes at the same time. While basic and fundamental institutions of the state did not exist, they pushed for the free market, privatization, and liberalization. This led to the failure of all processes. In order to cover the imposed democracy and to portray it as “indigenous,” a revised version of the 1964 liberal constitution was adopted. While the horizon for the exercise of liberties and freedom expanded, numerous challenges complicated the smooth transition to democratization. One of these challenges was the imposition of a highly-centralised, unitary, presidential system which neglected local democracy. Another challenge was to organise free and fair elections. Many elections have been conducted since 2001, but none were deemed to be free and fair which eroded citizens’ trust in electoral institutions.<sup>20</sup> Noah Coburn and Annah Larson conclusively argue that “elections have not contributed to stabilization at all” (2014: xiv). Instead of being a mechanism for democratic representation and accountability, the way elections are conducted in Afghanistan has reinforced power relations and patronage.

It is wrong to say that Afghanistan’s democracy appears to be at the crossroads now because democracy has been at the crossroads since the beginning. Instead, it is better to say that after twenty years of an “internationalised democratization process,” the illiberal elite failed democracy in Afghanistan. Afghanistan, like Bangladesh, Nepal and Pakistan, swung between autocratic and democratic regimes. The resurgence of religious extremists’ insurgency which prevented the consolidation of state institutions and democratic institutions is a by-

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<sup>20</sup> The elections of 2004 and 2005 were markedly better than any held since then (see Maley and Maley, 2016).

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product of corrupt democratization rather than a reaction to it.

While, in the words of Pettit, the state has been created to check domination, it becomes an agent of domination by arbitrary interference and exercise of power in Afghanistan. This is an indicator of the *structural* and *functional* crisis of the republic in Afghanistan. To revive the republic, it is crucial to focus on a contestatory democracy rather than consent-based democracy.

### **3. Civic virtue**

As it was argued, the republican theory proposes that active participation is possible only if the citizenries are motivated by civic virtues and they are transformed from free riders and self-centred individuals to citizens taking part in public affairs with a commitment to the common good. They believe that individuals are not inherently born with qualities of being a good and active citizen but these qualities would be nurtured through social institutions. In Afghanistan, civic virtue has not been nurtured by social institutions. Unfortunately, what Afghanistan had since 2002 was not civic republicanism but a thin democracy based on elections, which has not created anything except passivity and apathy.

Having said that, it is important to ask a very critical question, is there a possibility to renew our republic? If yes, how to do it? The conformists believe that the problem could be solved just by fixing bureaucratic regulations and executing the law. However, as it was discussed in the previous section, constitutional constraints and the rule of law have been undermined by the strong president. It is clear that the problem cannot be solved just through bureaucratic regulation. Viroli, in

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a conversation with Bobbio, also reflects on the same question in the context of a deep crisis in Italy: “can the republic be renewed?” Viroli said, “many think that the best cure for the Republic’s ill...would be institutional reform” (Norberto and Viroli 2003: 90). He went on to say that the constitutional assembly is a mechanism for institutional reform but it should be conducted in special circumstances such as revolution, regime change or collapse, and war. It is apparent that Afghanistan is facing such a situation. Thus, such an institutional reform is much needed. Among many requirements for sound institutional reform through a constituent assembly, says Bobbio, is “great personalities.” Apart from the intellectual and political personality of the constituent assembly of Italy, they had a shared experience of resistance against fascism. Members of Italy’s Constituent Assembly of 1946 had a common political memory and suffering under fascism, which led them to frame a political institution to prevent a repetition of fascism.

In Afghanistan, we need to think fundamentally about the shared ideals which could unite the constituent assembly. While the majority of people identify themselves with the republic, there are political elites who display solidarity with the Taliban and their Islamic Emirate. This solidarity is either originating from ethnocentrism or religious extremism. For instance, during the 100<sup>th</sup> anniversary of Afghanistan’s independence in 2020, a portrait of Mullah Omar, leader of the Taliban was displayed along with the other rulers of the country (Image 1). Similarly, another portrait of Mullah Omar was hung along with the photos of President Karzai and President Ghani in Paghman palace (Image 2).

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*Image 1 Portrait of Mullah Omar, leader of the Taliban, on the 100<sup>th</sup> anniversary of Afghanistan Independence Day Celebration in Darulaman Palace, 2020*



*Image 2 Portrait of Mullah Omar along with President Karzai and Ghani in Paghman Palace*

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Such a symbolic recognition is granted to the Taliban leader by the incumbent political elites who claim to defend the republican system and its values against the Taliban's Emirate. This clearly shows a lack of civic virtue. The poor quality of the political class who lacks civic virtue is a fundamental problem of the political system of Afghanistan.

With the existing factionalism, ethnocentrism and sympathies to the religious fundamentalists, how can we be sure of a united front for a republic? If the problem is lack of an enlightened political class, then how can one generate such a class? And is it possible?

Finding them, empowering them or enabling them within the extant extractive and exclusive political-economic systems imposed and maintained by outsiders is a challenging task. Viroli beautifully articulates this in one sentence, “[i]t is difficult to envisage a civic rebirth of our republic without the creation of a new political elite” (2003: 95). Bobbio says that “the republic is an ideal form of the state founded on virtue and patriotism of its citizens... Republic is an ideal state that does not exist anywhere” (2003: 9). Hence, an ideal republic is based on the civic virtue of its citizens, which does not exist in Afghanistan as its political elites are not virtuous but corrupt.

A republic dies if the majority of its politicians are corrupt or abuse their office. A republic dies if the majority of its citizens are not serving the public good, or are not ready to fulfil their civic duties. A republic dies if a woman like Farkhunda is mob killed on the public street and the majority of the religious community justifies the killing.

Like many other terms, the republic is also evacuated of its meaning or significance in Afghanistan. As fewer people display the

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qualities of civic virtue, the state in Afghanistan also does not display the qualities of the republic. The lack of civic virtue is a clear indicator of the *normative* crisis of the third republic in Afghanistan.

### **4. Active citizenship**

Republic is not just about the elections. Political participation and civic engagement during the interval between elections are as crucial as elections. As Machiavelli believed, on the one hand, a republican government is impossible without good citizenship, on the other hand, a republic is also essential for citizenship. However, as liberal individualism and liberal citizenship replaced civic republicanism in the 19<sup>th</sup> century, it created a thin democracy that limited participation to elections which in turn caused the individual to increasingly become a passive client of the state. To address this malfunction, the republicans in the late 20<sup>th</sup> century, proposed empowering the citizens through active participation. Civic citizenship manifests itself in civil and political society. Contemporary republicanism distinguishes between civil society and political society.

Where civil society is an extra-political arena in which individuals enter in order to articulate their purely private concerns. On the other hand, political society is generated whenever individuals communicate not their purely private concerns but rather matters of shared importance, in order to influence or make demands on the state (Roy 2008: 144).

Political participation in political society is not enough, it should also extend to the civil society and community affairs. Having said that, people in Afghanistan have a prudent sensibility for following and debating the common affairs, following the news, reading political memoirs, doing social media activism, and conversing about politics

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over a cup of tea in informal gatherings. Usually, discussions may entail drawing a parallel from history. The talks, round tables and conferences are not just attended by the experts and professionals but also the informed public. One may call this politically charged citizenship. Nonetheless, responsible citizenship is not limited to discussion, it also entails participation in institutions of civil and political society.

With the fourth and the last wave of democratization post-2001 Afghanistan, the space for political participation expanded, which included the expansion of civic engagement. However, a real momentum for active political participation was created by the articulation of the difference between the “Republic” and the “Emirate” as the US negotiated with the Taliban. It has created, in the words of Chantal Mouffe, radical democratic citizenship where people identify themselves with the *respublica*. (Mouffe 1992: 235).

One of the successful forms of civic engagement in recent years has been youth civic engagement. Given the fact that around three-fourths of Afghanistan’s population is under the age of 24, youth civic engagement matters the most for the quality of the republic in Afghanistan. The youth civic engagement is manifested in the forms of peace activism, advocacy, educational activities, art-based peacebuilding, protest movements, volunteerism and many more (UNOY Peacebuilders, 2018). The prominent examples of this form of activism are My Red Line campaign, Feminine Perspective campaign, and Helmand Peace March though they were not institutionalized.

Different types of civic engagements are the products of the forms of government, history, and the regime of governance. In a conflict-

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affected state such as Afghanistan, civic activism and participation have a complex character as the dynamics are shaped by the entrance, existence and intervention of the multiple local and global actors, such as donor agencies like World Bank, and transnational criminal networks, corrupt and dysfunctional state, warlords, foreign troops, and traditional local institutions. As the state institution in Afghanistan is limited, civil society activism is not just about raising the public's voice and holding the formal institution accountable but also about performing a certain governing role. Orzala Nemat and Karin Werner identified eight types of civil society activism in Afghanistan including non-governmental organizations, religious institutions, associations, trade unions and charity organizations, traditional councils such as Shura and Jirga, media, academia, and community-based organizations such as Community Development Councils (CDCs) (Nemat and Werner 2016). NGOs have played a crucial role in implementing developmental projects as National Solidarity Programs (NSPs). They were also effective in preparing the draft and mobilizing support for necessary democratic laws such as the Elimination of Violence Against Women Law and the Access to Information Law. Apart from NGOs, civic associations (Sazman-e Ijtimai) are the other form of institutions which particularly promotes volunteerism.

While there is no state control over conventional media and social media, the media has been manipulated for the money. The state gains buy-in loyalty of the media outlets by putting them on the government payroll.

The form of civic engagement may differ from an urban to a rural

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setting. Traditional councils and religious institutions<sup>21</sup> have been the common pattern of civic engagement mainly in rural areas. Unlike the NGOs and associations, the traditional village Shuras are not recognized by the state, and function informally. Given the weak presence of the state at the local level, the Shuras and Jirgas contribute as the decision-making bodies, conflict resolution mechanisms and public participation platforms in common affairs. These systems look like a self-governing active citizenship community life where all citizens are directly involved as are expected in a direct democracy.

The traditional religious institutions are proactive and constructive in a variety of common affairs such as encouraging public education, supporting vaccination programs and persuading political participation in political processes, including elections. Local norms, such as Hashar, manifest a form of participation in common affairs. Hashar is a collective performance of common affairs which may include the contribution of labour or money. Violation of this norm will have certain moral and social consequences for the individual. That includes shaming by the community members (Murtazashvili 2016: 115).

While the above-mentioned civic activism takes places at the local level, there is no network to integrate them into a comprehensive national process. In other words, the localised civic activism is not transformed into an all-encompassing national political activism. Three factors have undermined the growth of indigenous forms of civic engagement and its integration with national processes. The first two

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<sup>21</sup> Unlike modern politico-religious institutions, traditional religious institutions are not radical and ideological.

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factors are the war and international donor agencies' projects. The consecutive years of war have brought new social forces and reinforced the existing hierarchy such as warlords and maliks tied with patronage. The donor-funded initiatives, such as Community Development Councils (CDCs), undermined the traditional community councils. Most of the CDCs planned and established, in the beginning, does not exist now, either because the territory is not under the state's control anymore or the funding has been stopped. Considered as ephemeral bodies by the people, these institutions may destabilise local governance. In some cases, the flow of donor money through CDCs empowered the local warlords. They also lacked accountability to the local community members (Murtazashvili 2016).

The third factor that has undermined civic citizenship and active political participation is the state itself. As Murtazashvili (2020) concludes in her paper "Democracy without accountability," the failure of democracy in Afghanistan is not from "its citizens, its flourishing civil society, or its vibrant media," rather it is related to the constitutional arrangement. The current constitution does not provide the space for "ritual participation in the democratic system at the subnational level." If the scope for political participation in the system is minimal, the incentive for civic engagement will also reduce.

The scales and scope of civic engagement of the people are also impacted by the insecurity, intimidation by, and fear from both the government and the Taliban. Almost all social movements were targeted violently by attacks or suppressed by the state. Social activists were intimidated to either leave the country or abandon the activism. Recent

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survey data indicates that the majority of the people are afraid of participating in the voting process or peaceful demonstrations. In 2019, around 63% of the people expressed a lot of fear while participating in the voting process. There was a 22% increase in the level of fear of the people to participate in the voting process in 2019 compared to 2006. Similarly, 75% of the people expressed fear while participating in demonstrations. Nonetheless, 54% of people thought that they can influence the local decision-making process (The Asia Foundation 2019: 156-159).

The years between 2014 to 2017 was the key phase of the protest movement as a form of civic engagement. Three large protest movements included Junbesh-e Tabasum (Tabassum movement) in 2015, Junbesh-e Roshanayi-e (Enlightenment movement) in 2016–2017, and Junbesh-e Rashtakhiz-e Taghir (Uprising for Change) in 2017. While these protests were driven by the failure of governance, the way government suppressed these movements also indicated the failure of Ghani to embrace constitutionalism and democracy. The government not only used the “soft oppression” mechanism, such as intimidation or blocking the roads ahead of the protesters with containers, in the Enlightenment movement but also used brutal and violent methods, such as deliberate shooting and killing of the protesters in the Uprising for Change. Ghani stated that there should be some limitations on freedom and later the National Security Council and the Law Committee of the Cabinet amended the Law on Gatherings, Demonstrations and Strikes which included more restriction on the freedom to assembly, and limitations on the right to participation (Bose, Bizhan and Ibrahim)

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2019). So, the state has tried to stifle any form of protest and right to dissent. This is an arbitrary use of power which is anti-republic.

International community not only rejected their support to the true national movements on any nature, be it democrat, religious or nationalist in the agenda, but also prevented the creation and strengthening of these movements. The people who are accused of suppressing these movements in government are strangely good partners of the international community.

The dysfunctional political institutions also do not allow active participation. While the political elite claim ownership in the republic, they have shrunk the space for civic citizenship and suppressed it. This has caused the civic engagement at the local level not to be integrated to the national level.

Based on what was argued, it could be concluded that the current republic is facing a *structural*, *functional* and *normative* crisis as a result of the failure of constitutional constraints, contestatory democracy and civic citizenship. This has changed the civic republic into a vicious republic.



## CAUSES OF THE VICIOUS REPUBLIC

In a society which is in the midst of war, there are multiple drivers of political decay. As far as a republic is concerned, to borrow Maurizio Viroli words, three main threats to a democratic republic are factionalism, demagogue leaders, and money. Viroli defines factionalism as a system, “where factions are understood to be groups of men loyal to a single leader, whose principal aim is to obtain advantage and privilege” (2003: 66). In the Italian context, Norberto Bobbio and Maurizio Viroli speak of personal parties as a form of factionalism. A personal party is the one which starts and ends with a leader. It is evident that the parties in Afghanistan are personal as well. Almost all parties live for their leaders and by the virtue of the leaders. This is not only a characteristic of the modern parties in Afghanistan but also the traditional ones established in the 1960s. The four main parties, namely, Hizb Jamiat Islami, Wahdat Islami party, Hizb Islami and Junbish were all factionalist and personal parties. Most of them got dismembered into factions after the demise of their leaders. For instance, Wahdat Islami, initially, got divided into the Mazari faction and Akbari faction. Later, each faction got further divided into the Mohammad K. Khalili faction, Mohammad Mohaqiq faction, Qurban Ali Urfani faction, and Sayed Ali

## CAUSES OF THE VICIOUS REPUBLIC

Kazimi faction. Similarly, Jamiat Islami was a personal party lead by Burhanuddin Rabbani after whose demise the leadership went to his son Salahuddin Rabbani. It got fragmented into the Rabbani faction, and Atta Mohammad Noor and Younus Qanoni faction.

However, it is important to note that factionalism is not limited to political parties in Afghanistan. Most of the political elites use state institutions for their partisan benefit. They conduct party and personal meetings in the public offices. The predominant strategy of these elites is state capture by their faction. President Ghani and many other senior political leaders embedded the state institutions with factionalism. He used the state apparatus to develop a system of patron-client relations. A limited number of his loyalists have occupied the main state institutions and keep rotating from one institution to the other.

The second threat to the republic is demagogue leaders. The republic in Afghanistan is under siege not just by the fundamentalists such as the Taliban but also by a group of ethnocentrists, demagogues. They are either remnant of the old political order such as the royal, communist or the Jihad eras, who in some cases see themselves as a continuation of the respective eras, or they are the newly emerged elite who did not have a political background. These circles at times create an alliance and at times counter each other. Each of these circumstances depends on the conditions of their interests and access to a share of power.

As the talks with the Taliban moved forward, the incumbent political elites used the term “republic” instrumentally to justify their presence in power. In practice, the President and his circles have

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systematically violated the norms and principles of the republican system. Of these violations are arbitrary use and misuse of power. The irony is that the concept of the republic has become a fancy term to defend and preserve the interest of the incumbent elites. They have also attempted to appropriate the narrative of the republic in their own interest. They proclaim themselves as defenders of the Republic, while the same group rigs the elections. The Right invokes the Republic as a political system based on elections, while the political theory of the republic considers the republican system as emancipation from all forms of domination, checks on arbitrary use of power, and active political participation.

The third threat to the republic is money. Viroli says,

I think of the nature of the Medici regime in Florence during the fifteenth century. For a long time, the Medici family did not change the outward appearance of the republican institutions. Using their wealth, they distributed favour and by those favours, they could rely on a vast network of friends who they placed on positions of power in the Republic (Norberto and Viroli 2003: 78).

Ashraf Ghani's Afghanistan is Medici's Florence. The difference is that Ghani used the state machinery to force many businesspersons to pay for his team. His faction also distributed state positions in exchange for money. The recent electoral scandal exposing Najib Azad, member of Ghani's campaign team, indicated how much money was spent to buy loyalty in Ghani's campaign (Kabulnews 2020). As a result, this clientelistic state excluded groups peripheral to the system.

The above demagogue, clientelist, corrupt and ethnocentrist political elite do not have the capacity to envision the *Idea of*

## CAUSES OF THE VICIOUS REPUBLIC

*Afghanistan.* Not just the prospects of the republican system, but even the prospect of a stable and unified Afghanistan depends on how the political elite are able to stand above their narrow personal interest. The idea of Afghanistan will not be envisioned and materialised until and unless the political elite does not develop civic virtue and seek decisions based on the general will and common good.

## CONCLUSION

This treatise aimed to go beyond the romanticised, oversimplified and sentimental rhetoric on the republic to explore and understand the nuances of the status and crisis of the republican system in Afghanistan. I hope that this treatise would trigger a thoughtful deliberation on the same.

The treatise found that the republican system is challenged by four crises: *ideational*, *structural*, *normative* and *functional*. On the *structural* dimension, the republic is weakened by the lack of constitutional constraints to check the arbitrary use of power. Separation of powers and checks and balances, counter-majoritarianism, and rule of law, which are key for constitutional constraints are missing. The pervasive arbitrary use of power is a clear sign of failure of constitutional constraints.

On the *functional* dimension, corruption, patrimonialism, factionalism and the absence of active citizenship undercuts the republic in Afghanistan.

The *normative* bases of the republic have also been undermined by illiberal ideas, lack of civic virtue, and extremism and ethnocentrism. It is faced with a threat of religious fundamentalists who do not want to

renew it, but rather wish to subvert it and to replace the republic with the Emirate. An equally important hidden threat is the corrupt and factionalist ruling political elite who undermine the governance.

The most important crisis of the republic is the *ideational* one. The idea of the republic and the Islamic republic in Afghanistan is undertheorized. While it is copied and adopted as a universal practice, its existence and adoption are not rationalised and conceptualised. The ideational crisis also resonates the larger crisis of Islamic civilization. While the republic was rationalised by the neo-Mutazilite such as Jamaluddin Afghani and Mohammad Iqbal, it is challenged by the extremists such as Al Qaida, Islamic State (IS), and the Taliban.

The study aimed to fill this gap by reconceptualizing the republic and the Islamic republic. It was argued that the Islamic republic in Afghanistan resonates the Mutazilite idea of the state where Ijma is manifested in the National Shura, the Parliament. On the other hand, the Taliban resonates what Jamaluddin Afghani called ignorance and despotism. The Taliban's claim that the current system is not Islamic is not true.

The mentioned crises have challenged the creations of a righteous and civic republic and instead have given us a vicious republic. The constitution calls the state a republic but in fact it is a monarchical republic where the monarch changes every five years. From a constitutional, normative, structural and functional perspective, Afghanistan was not a republic. Of course, some credit goes to the international community who claim to be creating a democratic republic in Afghanistan. To fix the vicious republic, the republic should be based

on constitutional constraints, contestatory democracy, civic virtue, and multicultural, differentiated and active citizenship.

Unfortunately, still, as Doha talks are going on, there has been no in-depth and thoughtful discussion and debate on what a republic is both at the societal and political level. The voice of civil society which emphasises on the importance of a republican state is left with no support. The support of the international community for preserving the republican state is on the wane. The US has explicitly agreed to compromise the phrase “republic” with “Islamic State.” It is worth mentioning that the phrase “republic” is not just a term. The republic is the nodal point of emancipatory and democratic discourse and systems, which unifies and gives meaning to all signifiers such as civic virtue, constitutional constraints counter-majoritarianism, democracy, and active and differentiated citizenship. By compromising the term republic, the meanings of mentioned signifiers would be contested and redefined by competing discourses such as Islamic state/Emirate. It goes without saying that Islamic state in any form – an Emirate or a Caliphate or Wilayet or other forms – is not compatible with the mentioned features of the republic.



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Cover image: Symbol of constitutionalist movement in 1910s.  
Quill represented knowledge and effort to spread education.  
Sword represented effort for independence.



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