

# Constitutional Interpretation in Afghanistan's Legal System from 1923 to 2021

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**Abstract:** *This article provides an analysis of constitutional interpretation in Afghanistan's legal system from 1923 to 2021, encompassing the evolution of judicial and political perspectives across different regimes. The study traces the development of constitutional interpretation starting with the 1923 Constitution, examining key milestones and the impact of various political upheavals, including the monarchy, republicanism, communist rule, and the post-2001 democratic transition. Through a critical review of primary legal documents, and secondary scholarly literature, the article highlights the dynamic interplay between traditional Islamic principles and modern legal frameworks. It assesses how shifts in political power influenced the interpretation and application of constitutional provisions, particularly in the realms of fundamental rights, governance, and the separation of powers. The analysis underscores the challenges and opportunities in achieving constitutional stability and judicial independence in a context marked by persistent conflict and socio-political transformation. In future Afghan constitutions, the establishment of a constitutional review mechanism with well-defined competencies, independent from other institutions, and possessing legal legitimacy is essential for ensuring constitutional stability, upholding the rule of law, and protecting citizens' rights.*

**Key Words:** *Constitutional Interpretation, Loya Jirga, Constitutional History, Constitutional Review.*

## 1. INTRODUCTION :

Interpretation of the constitution is one of the most important legal issues in the constitutional law system of countries. In many legal systems, the courts or a specific institution is designated to exercise this authority. Various approaches to interpreting the constitution have been proposed, and these theories have faced criticism. Additionally, several methods for interpreting the constitution have been introduced and presented. In any country, an institution dedicated to constitutional interpretation is essential. A country's constitution specifies which institution holds the authority to interpret it.

The role of the constitution in determining the government structure is considered necessary to turn the theory of constitutionalism into reality. The constitution describes the structure of the government and defines the limits of power. (Ehler et al., 2015, p. 6) For example, how the country's political system must be and through which channels the voice of the people is heard. The Constitution guarantees the fundamental rights of citizens.

Interpretation of the Constitution during its implementation is an important and fundamental matter. Because the status and basic legal interpretation are not the same; the Constituent Assembly of the Constitution (in Afghanistan *Loya Jirga*) is a temporary body. And with the approval of the Constitution, its work ends. Despite the objections that have been raised for the existence of an institution with the authority to interpret the constitution, today most of the scholars of constitutional law believe that there must be a predetermined institution in the country to have the authority to interpret the constitution. Because the discussion of this article is not focused on the existential philosophy of interpreting the Constitution. A detailed discussion in this field is omitted.

A review of the research literature on constitutional interpretation and its competent authorities reveals that numerous studies have been conducted globally. However, in Afghanistan, from the adoption of the first constitution in 1923 to the seventh constitution approved in 2004, this significant issue has not received serious attention within constitutional law. It is noteworthy that neither in practice nor in scientific research, this major issue has not been given any fundamental attention.

Given the importance of the topic and its relevance to my doctoral thesis, I decided to write an article on constitutional interpretation in Afghanistan. This article aims to review Afghanistan's constitutions from 1923 to the most recent one in 2004 to understand the methods and institutions that have existed for constitutional interpretation. It will explore the main challenges in this area, particularly after the 2001 developments and the establishment of the democratic system in Afghanistan. Additionally, the article will identify major challenges in this field and extract lessons for the future.

Before reviewing the interpretation of the Constitution in Afghanistan's constitutional history, I will first briefly discuss the importance of constitutional interpretation. Following this, I will examine the interpretation of the constitution from 1923 to 2021, and finally, I will discuss the lessons learned from this history for the future of the country's constitution.

## **2. The Importance of Constitutional Interpretation :**

The lawmakers cannot address every issue in legislation, particularly in the Constitution. This is because the Constitution is meant to outline matters about governance and the fundamental rights and freedoms of the citizens in general. Relying on the legislator to address a country's diverse and constantly evolving social and legal needs is an unrealistic expectation. The legislator cannot give a permanent and immediate answer to all the questions that arise in law enforcement. Thus, it is essential to interpret the law, particularly the Constitution. Furthermore, various concerns about the necessity of interpreting the law have also been brought up by jurists, demonstrating the necessity of interpreting the law broadly. A few of these are the advancement of civilization, political demands, shifts in economic demands, the need for a hostile season, modifications to the text and style of the legislation, the use of improper language in the legislation, and lawmaker carelessness. (Kadkhodae & Bahadori Jahromi, 2018, p. 7)

The Constitution is the paramount law within the legal system. It delineates the fundamental rights and freedoms of citizens, establishes the power structure within the political system, and defines the foundations and objectives of the legal system. It stands at the apex of the hierarchy of legal norms. All other laws, regulations, and procedures produced in the legal system, in terms of rank, are defined under this law, and in the hierarchy of norms, they have a place below the Constitution. The official interpretation of the Constitution is based on the opinion of a specific institution that is provided in the Constitution to clarify ambiguous and unclear cases. In fact, in the cases of encountering the ambiguity and silence of the Constitution or the conflict between the texts of this law, which causes a difference in understanding of the provisions of the Constitution, the official meaning of the Constitution is what the official interpretation of the Constitution attributes to it. (Chandrachud, 2016)

Different institutions in countries have the authority to interpret the constitution. In the United States of America, the Supreme Court and all courts have the authority to interpret the Constitution. However, the final jurisdiction is related to the Supreme Court. In countries that have a constitutional court, this institution has the authority to interpret the Constitution. In France, the Constitutional Council, which is a body of a political nature, has the authority to interpret the Constitution. In Iran, the Guardian Council of the Constitution has the task of interpreting the Constitution. Since our main discussion is about the interpretation of the constitution in Afghanistan, I will not go into more detail about the approaches and institutions interpreting the constitution here.

## **3. Constitutional Interpretation in Afghanistan Constitutions :**

In Afghanistan, 1923 is considered the beginning of drafting and approving laws and regulations. This year, the first Constitution of Afghanistan entitled "*Nezam Namai Asasis Doalat Halia Afghanistan*" was approved in the *Loya Jirga* of Jalalabad province and later in the *Loya Jirga* of Paghman district. (Danish, 2015, p. 88) Afghanistan has not enjoyed political stability throughout history. (Thier & Worden, 2017, p. 2) Until 2004, the constitution was repealed six times and a new constitution was approved instead. However, the constitutional review and the interpretation of the constitution have not been institutionalized in the country's legal system. In this section, we only study the interpretation of the Constitution in the past constitutions and governments from the first constitution to the 2004 constitution.

Lawyers argue that the frequent changes and cancellations of Afghanistan's constitutions, which were developed and approved with the participation of the people and scholars but subsequently overturned with regime changes, indicate that Afghan regimes have not been democratic. They explain that these regimes have risen and fallen due to interventions and, under pressure, have repealed existing laws and enacted new ones. Legal scholars suggest that Afghanistan's constitution required amendments, a task that could be undertaken by the Constituent Council. (Etilaatroz, 2021)

### **3.1. Constitutional Interpretation in the Monarchy Constitutions of 1923-1964**

The first constitution was approved after the independence of Afghanistan in 1923. This constitution was important because it established a relatively constitutional monarchy and law-based government for the first time. (Danish, 2019, p. 26) Also, another important aspect was that it recognized the fundamental rights of citizens in the

fields of freedom of speech, freedom of assembly, freedom of property, equality of all citizens before the law, prohibition of slavery, and prohibition of torture. (Pasarlay, 2023, p. 70)

According to Article 39 of the 1923 Constitution, the State Council was established, whose members were appointed and elected. This institution played the role of a constitutional review mechanism in Afghanistan. It should be noted that this institution had advisory authority. According to Article 42 of the Constitution, if the citizens' rights were violated, the State Council could draw the government's attention to the matter. According to Article 46 of the Constitution, this council would check all drafts of laws and regulations before their approval by the Council of Ministers.

Amanullah had asked the government council to consider the request of the constitutional movement to include the constitution. The constitutionalism movement in the country was the "separation of powers" partly derived from the ideas of Seyed Jamaluddin Afghani and was influenced by the success of the constitutionalism movement in Iran and the establishment of the "republic" system in Turkey. The State Council had reviewed about a hundred laws and bills. (Arvin, 2010)

Article 101 of the 1923 Constitution gave the Council of State the authority to interpret and review the amendment of the Constitution. The State Council interpretations should be approved by the Council of Ministers. Although the Council of State was a consultative body, it was the first step to establishing an institution to protect the constitution in Afghanistan. In addition, most importantly, the constitution makers had delegated the authority to interpret the laws to this institution.

After the fall of Amanullah Khan's government, Amir Habibullah Kalkani took power for nearly nine months. During his tenure, all the laws from the Amani period were abolished, and no new laws were enacted. However, when Mohammad Nader came to power, the National Assembly, "House of Representatives," approved the second constitution in October 1931, titled "Basic Principles of the Supreme Government of Afghanistan." The 1931 Constitution is entirely silent regarding the protection and interpretation of the Constitution. The legislators of that time did not address these issues at all. The 1931 constitution only stated that laws should be approved in accordance with the religion of Islam. However, he has not stated which institution will study the compliance of the laws with the Constitution. (Haress, 2017, p. 7) This means that the interpretation of the Constitution has not been addressed since 1931. This reflects the lack of familiarity and interest among Afghan courts and judges in the issue of constitutional review.

After the death of Mohammad Nader, his son Mohammad Zahir took power as the king. He was the last king of Afghanistan who ruled this country for about forty years from 1933 to 1973. Zahir Shah developed Afghanistan's diplomatic relations with many countries even during the Cold War and started to modernize the country in the 1950s. Between the dates of 1964, he called the *Loya Jirga* to approve the constitution and finally, this *Loya Jirga* approved the third constitution in 11 chapters and 128 articles.

The 1964 constitution was more moderate than the previous constitutions and a constitutional and unitary kingdom was established on top of it. The affairs related to the government, the king, the basic rights and duties of the people, the National Council, the executive, the judiciary, the administration, and the state of emergency were regulated in it. (Pasarlay, 2018, p. 268) The 1964 Constitution is also silent on the protection and interpretation of the Constitution. Only Article 64 states that "no law can contradict the fundamentals of Islam and other values contained in this constitution." But no institution was identified to review the compliance of the laws with the constitution. Although the 1964 constitution guaranteed the separation of powers for the first time in the Afghan constitution and declared the judiciary to be independent, it is ambiguous in the interpretation and protection of the constitution. (Timory, 2019, p. 229)

### **3.2. Interpretation of the Constitution in the Constitutions of 1976-1987**

In 1973, Daud Khan seized power through a military coup. He declared a republican system and annulled the 1964 constitution, which he opposed. Rather than amending the existing constitution, he chose to abolish it entirely. In 1976, he convened the *Loya Jirga* to approve a new constitution. The 1976 constitution established Afghanistan as a republic with a one-party system. In this constitution, no specific institution was considered for the protection of the constitution and the review of the compliance of the laws with the constitution. (Leake, 2023, pp. 311-312) Only Article 135 states that the Supreme Court has the authority to interpret the Constitution.

Before the 1976 Constitution became effective, a coup d'état by the People's Democratic Party of Afghanistan took place in 1978, and as a result, the Daud Republic was overthrown and the People's Democratic Republic of Afghanistan was declared. The 1976 Constitution was abolished and in 1980 a constitution under the title of the temporary Constitution was approved by the Revolutionary Council who were at the head of power. This constitution is silent about the authority responsible for protecting and interpreting the constitution. The reason for this omission was that all power was concentrated in the hands of the Revolutionary Council, centralizing all authority within a single institution.

When Najibullah assumed power, he introduced a series of corrective measures, including the approval of a new constitution in 1987, ratified by the Loya Jirga. (Huq & Ginsburg, 2014, p. 119) This constitution instituted a parliamentary presidential system, characterized by a bicameral parliament and an independent Supreme Court. Following a prolonged hiatus, parliamentary elections were conducted, allowing the newly formed parliament to commence its legislative functions.

The Constitution of 1987 created an institution called the "Constitutional Council" to ensure the conformity of laws, other legal documents, and international treaties with the Constitution. The Constitutional Council is the first step in the history of Afghanistan's constitutional law, an independent body to review the conformity of laws with the Constitution. According to Article 123 of the 1987 Constitution, the Constitutional Council had the following duties: "Checking the compliance of laws, legislative decrees and international treaties with the Constitution, providing legal and judicial advice to the President on constitutional issues."

At first, the members of the Constitutional Council were 9 people, but with the amendment that was introduced to the 1987 Constitution in 1990, the members of the Council reached 11 people. (Shafi, 2018, p. 6)

Even though the Constitutional Council was an advisory body to the President of the country, in accordance with the critical situation and conditions of the country in that period, the Constitutional Council has had effective and acceptable opinions and performance in its short life. Another important step of this period was the publication of the opinion of the Constitutional Council in the official gazette, which elevated the opinions of the Council from the level of administrative and normal schools to lasting legal documents, which brought great glory to the Council. After the fall of Najibullah's government in 1992, Afghanistan entered the stage of civil war and did not have a stable political system until 2001. Bonn's agreement in 2001 led to the establishment of the Islamic Republic of Afghanistan and the adoption of a new constitution in 2004. In the next section, I will study the interpretation of the Constitution in this period.

### 3.3. The 2004 Constitution and the problem of interpretation

There is no clear position in the 2004 constitution about the constitutional review mechanism. On the one hand, Article 121 of the Constitution entrusts the Supreme Court to review the constitutionality of laws, legislative decrees, international treaties, and international conventions with the Constitution and interpret them at the government's or the courts' request. On the other hand, Article 157 of the Constitution stipulates a commission called the "Independent Commission for Oversight of the Implementation of the Constitution" (ICOIC). The President appointed the members of ICOIC with the approval of the House of Representatives (*Wolesi Jirga*).

The contradictory statement of the constitution and the ambiguity in determining the constitutional review body (Supreme Court or ICOIC) was a confusing statement that adopted a mixture of judicial and political constitutional review models. As a result, Afghanistan's constitutional system, in this regard, was facing challenges. (Mohammadi, 2018, p. 86) Looking at the draft history of the constitution and the discussions of draft and scrutiny commissions and the Constitutional *Loya Jirga* committees, it could be found that the constitutional review had been one of the most important and painful issues in this process. The importance of the issue, the lack of background in the country's constitutional system, mechanisms, methods, and various models were important issues that made it difficult to make decisions and agreements. (Hashimzai, 2012, p. 676) In addition, interference of international partners, international bodies, and external powers involved in Afghanistan's affairs doubled the problems. The different opinions between the United States and Europe, especially during the drafting of the Constitution, were visible. Likewise, the differences between them on the definition of the constitutional review system impacted the drafting process, the negotiations of the political groups, and the deliberations of the Constitutional *Loya Jirga*. (Mohammadi, 2014)

An examination of the 2004 Constitution drafting process shows that the current text of Article 121 did not exist at all in the Judiciary chapter until September 10, 2003. Before that date, Chapter eight of the draft law was devoted to the "Supreme Constitutional Court," which stated in Article 146: The Supreme Constitutional Court of Afghanistan has the powers to Review the compliance of international laws, legislative decrees, treaties, and treaties with the Constitution and Interpretation of the Constitution, laws, and legislative decrees. (Hamidi & Jayakody, 2015, p. 18)

The Constitutional Court was based on the European model of constitutional review. Still, after a short time, there was a strange turn in the work of the Constitutional Drafting Commission. The draft, released in October 2003, did not mention the Constitutional Court. Jurisdiction for the Constitutional Court was vested in the Supreme Court. Article 121 of the draft stated: The Supreme Court examines the conformity of laws, legislative decrees, international treaties, and international conventions with the constitution only at the government's request or the courts. The Supreme Court interprets legislative statutes and decrees. Later, the draft text, published on December 28, 2003, during the Constitutional *Loya Jirga*, presented the previous text in summary form as the current text of Article 121 of the 2004 constitution.

Correspondingly, during the discussions of the Constitutional *Loya Jirga* and its committees, we realize differences of opinion. From the study of the meetings of the ten committees, it is inferred that the European model and

the establishment of a particular constitutional review body for the Constitution have had many supporters; As published in the draft review of Article 121, the First, Fourth, Fifth, Seventh, Eighth and Ninth Committees have considered the removal of the interpretative jurisdiction of the Supreme Court and emphasized the establishment of a Constitutional Court. The Reconciliation Committee also voted to reject the interpretative jurisdiction of the Supreme Court without proposing an alternative, only by deleting the second paragraph of Article 121. (Constitutional Loya Jirga Secretariat, 2004)

In the same way, in reviewing the first paragraph of Article Sixty-four, which places "oversight of the implementation of the Constitution" among the powers of the President. Issues related to oversight and its mechanism were raised. From the views expressed in the committees of the Constitutional *Loya Jirga*, it is understood that the formation of an independent oversight body was common to all, and the only noticeable difference was in its name. (Rasoli, 2009) Some proposed the Constitutional Council, some the Supreme Court of Constitutional Protection, and some the Constitutional Court and the like. Eventually, the Understanding Committee approved the formation of an "Independent Commission for the oversight of the Constitution." Finally, the current text of Article 157 of the 2004 Constitution was adopted in the *Loya Jirga*, which is mainly a sign of the superiority of the European model in the eyes of the members of the *Loya Jirga*. (Mohammadi, 2014)

The adoption of two different models of constitutional review in the 2004 constitution was due to two factors; One is the competition and influence of Americans and Europeans in presenting their constitutional review models, and second, the inexperience of the members of the *Loya Jirga* in examining the advantages and disadvantages of American and European models and, worst of all, the production of a model of both, which not only did not solve a problem but also caused additional problems in this regard; Objective evidence, including a dispute between the president and parliament and the Supreme Court and parliament, confirms this claim. (Danish, 2015, p. 139)

Additionally, it should be mentioned that Article 121 of the 2004 Constitution allows the Supreme Court both concrete and abstract constitutional review. The Concrete constitutional review occurs when the lower courts request a review, but the abstract review is done only at the government's request. (Haress, 2017, p. 10) Also, the 2004 constitution only allows for a posteriori review. The Supreme Court can only review legislative documents after their approval.

In addition, the same problems apply to Article 157 of the Constitution. This article explicitly indicates the ICOIC's authority to oversee the implementation of the constitution. Therefore, it does not imply the interpretive competence of the ICOIC. This article of the constitution implicitly states the interpretative authority of the ICOIC. To carry out its duties, the ICOIC needed to interpret the constitution in some cases. As a result, both the Supreme Court and the Commission's competence in interpreting the Constitution are vague. This has led to confusion and, as a result, an atmosphere of abuse of the law in favour of politics. (Pasarlay, 2018, p. 275)

Finally, the US-European conflict in defining the constitutional review mechanism in the Constitution ended in favour of the American model. In practice, Afghanistan's constitutional system was based on the American model. Accordingly, the Supreme Court had jurisdiction over part of the constitutional review, and the ICOIC had no significant role to play. (Dempsey & Their, 2009, p. 2) The most obvious reason for this claim was that the Supreme Court mutilated the law of the Commission at the request of the President. As stated, two clauses of Article 8 of the Commission Law were found by the Supreme Court to conflict with the Constitution and prevented its implementation. To clarify the matter, it should be said that the National Assembly initially approved the commission in 2008 as usual. Still, the President vetoed it, and the National Assembly re-approved it with two-thirds of the votes of all members. However, the president referred the law to the Supreme Court, claiming that some of its provisions were inconsistent with the constitution. Based on Judgment No. 5, which was previously stated, the Supreme Court declared the first and fourth paragraphs of Article 8, the first paragraph of Article 5, Article 7, the first paragraph of Article 11, and Article 15 unconstitutional and declared them invalid. (Timory, 2020, p. 43)

The review of Afghan constitutional law history shows that various reasons have prevented the institutionalization of constitutional review. One of the factors may be partly due to the tendency among a group of Afghan judges to turn to ready-made Islamic sources to find a solution to the ambiguity in the text of the law. Most of Afghanistan's past constitutions, including the 2004 constitution, refer judges to Islamic law and jurisprudence if they are not clarified in official law. (Kamali, 2014, p. 5) Article 130 of the 2004 Constitution states: "The courts shall apply the provisions of this Constitution and other laws in the cases under consideration. Whenever there is no provision in the constitution and other laws for one of the cases, the courts can refer to Hanafi jurisprudence within limits set by this constitution and shall resolve the case so that Justice should the law be provided in the best manner." Thus, Judges have referred to Hanafi jurisprudence without any effort, which has prevented the institutionalization of constitutional review. (Saeed, 2021, p. 27) Also, the absence of the constitutionalism tradition in Islam has caused this issue to be ignored. (Kamali, 2014, p. 5) In addition, the ambiguity of the 2004 constitution has prevented the Supreme Court and the Commission from making binding decisions. They have become advisory bodies to political oranges. (Pasarlay, 2018, p. 249)

#### 4. Lessons for the Future:

The history of Afghanistan's constitutional law shows that the constitution has not been very stable and seven constitutions have been repealed during the last hundred years. In addition, the mechanism of protection and interpretation of the Constitution has not been institutionalized. The lack of institutionalization of constitutional interpretation in Afghanistan can be attributed to several interrelated factors, including political, legal, and socio-cultural challenges. Here are the main reasons: Frequent Changes in Government (Rodríguez, 2023), Lack of Political Will (Thier & Worden, 2017), Limited Judicial Independence (Amin, 2020), capacity constraints (Hashimy, 2023),

Ambiguities in the Constitution (Pasarlay, 2018), Overlapping Jurisdictions (Duryea, 2022), Cultural and Social Factors (Barfield, 2008), Societal Resistance (Barfield, 2008), Role of Sharia Law (Lombardi, 2013), External Interference (Bizhan, 2023), Dependence on International Aid and conflict and violence.

Studying the challenges and dynamics of constitutional review and interpretation in Afghanistan provides valuable insights into broader themes relevant to constitutional law and the development of legal systems in post-conflict or developing countries. Here are several lessons we can learn:

- **Stable Governance:** A stable political environment is crucial for the development and institutionalization of robust legal frameworks, including constitutional review and interpretation. Frequent changes in government and political upheaval undermine the establishment of consistent legal practices.

- **Judicial Independence and Capacity:** ensuring that the judiciary operates independently from other branches of government is vital for impartial and authoritative constitutional interpretation.

- **Clear Constitutional Provisions:** Constitutions need clear and precise language to guide interpretation. Ambiguities and gaps create challenges and inconsistencies in legal interpretation and application. In addition, establishing explicit guidelines and frameworks for constitutional review and interpretation helps in maintaining consistency and clarity.

- **Integration of Diverse Legal Traditions:** Effective legal systems in multicultural societies need to harmonize modern constitutional principles with traditional and religious laws. This balance can foster greater societal acceptance and legitimacy. Furthermore, incorporating aspects of customary law where possible can enhance the relevance and acceptance of the formal legal system.

- **Sustainable Development:** International aid and support should focus on building sustainable legal institutions rather than creating dependency. Capacity building and local ownership are key to long-term success. Moreover, International efforts must be sensitive to local contexts, ensuring that external support aligns with the cultural, social, and political realities of the country.

- **Community Engagement and Education:** Public education on constitutional rights and the legal system is crucial. Informed citizens are better equipped to advocate for their rights and hold institutions accountable. Additionally Engaging local communities in legal reforms and the interpretation process can enhance legitimacy and compliance.

- **Security and Rule of Law:** Establishing the rule of law in conflict-affected areas requires addressing security challenges. Protecting legal professionals and ensuring their safety is essential for a functioning judicial system. As well, Efforts to strengthen the rule of law must also focus on building trust in legal institutions through transparency, accountability, and consistent application of the law.

- **Lessons on Constitutional Design:** Constitutions should be designed to be adaptive, capable of evolving with changing societal needs and conditions. This flexibility can help accommodate diverse legal traditions and emerging challenges. Involving a wide range of stakeholders in the constitutional drafting process can create a sense of ownership and ensure that the Constitution reflects the values and needs of the entire society.

#### 5. Conclusion :

The institutionalization of constitutional interpretation in Afghanistan is hindered by a complex interplay of political instability, judicial weakness, legal ambiguities, cultural diversity, and security challenges. Addressing these issues requires a multifaceted approach that includes strengthening judicial independence, clarifying legal frameworks, promoting political stability, and enhancing the capacity of legal professionals. Additionally, fostering greater societal acceptance of formal legal institutions and integrating traditional and religious norms with modern constitutional principles are crucial steps towards achieving a more robust and institutionalized system of constitutional interpretation. The experience of Afghanistan highlights the complexity of constitutional interpretation in a diverse and evolving legal and political landscape. It underscores the need for political stability, judicial independence, clear legal frameworks, and the integration of traditional and modern legal principles. Additionally, it emphasizes the importance of international support that is context-sensitive and sustainable, as well as the need for community engagement and education to build a robust and respected legal system. These lessons are not only applicable to Afghanistan but also offer valuable insights for other countries facing similar challenges in their legal and constitutional development. Consequently, we can say that in the future constitution of Afghanistan, the existence of a mechanism to protect the constitution with clear

competencies and independent from other institutions with legal legitimacy is necessary for the stability of the constitution, the rule of law, and the protection of citizens' rights.

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