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NIZAMNAMAH-YE-ASASI- DAULAT-E-'ALLIYAH-YE-AFGHANISTAN

(Basic Law of the State of Afghanistan)

CONSTITUTION OF AFGHANISTAN

(Hamal 20, 1302 (April 9, 1923) Original in Pushto and
Translated into Persian - Published by the
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Article 1.

Afghanistan is completely free and independent in the administration of its domestic and foreign affairs. All parts and areas of the country are under the authority of His Majesty the King and are to be treated as a single unit without discrimination between different parts of the country.

Article 2

The religion of Afghanistan is the sacred religion of Islam. Followers of other religions such as Jews and Hindus residing in Afghanistan are entitled to the full protection of the state provided they do not disturb the public peace. (Article revised in amended version published in 1305 i.e. 1926 - See Appendix)

Article 3

Kabul is the capital of Afghanistan but all the people of Afghanistan are entitled to receive equal treatment from the government and the people of Kabul are not entitled to any special privileges not extended to the people of other cities and villages of the country.

Article 4

In view of the extraordinary services rendered to the cause of progress and independence of the Afghan nation by His Majesty the King, the noble nation of Afghanistan pledges itself to the royal succession of his line on the principle of male inheritance through selection to be made by His Majesty and by the people of Afghanistan. His Majesty the King on ascending the throne will pledge to the nobles and to the people that he will rule in accordance with the principles enunciated in the Shari'a and in this Constitution and that he will protect the independence of the country and remain faithful to his nation.

Article 5

His Majesty the King is the servant and the protector of the true religion of Islam and he is the ruler and King of all the subjects of Afghanistan.

Article 6

The affairs of the country are administered by the Ministers of the government who are selected and appointed by the King. Each Minister is responsible for his Ministry; therefore the King is not responsible.

Article 7

Mention of the King's name in the Khutba (Friday prayers); minting of coins in the King's name; determination of the rank of officials in accordance with appropriate laws; awarding of medals and decorations; selection and appointment, dismissal and transfer of the Prime Minister and other Ministers; ratification of public laws, promulgation and protection of public laws and of the Shari'a; being commander in chief of all the armed forces of Afghanistan; promulgation and protection of military rules and regulations; declaring war, making peace and other treaties; granting amnesty, pardoning and commuting legal punishments, are among the rights of His Majesty the King.

General Rights of the Subjects of Afghanistan

Article 8

All persons residing in the Kingdom of Afghanistan, without respect to religious or sectarian differences, are considered to be subjects of Afghanistan. Afghan citizenship may be obtained or lost in accordance with the provisions of the appropriate law.

Article 9

All subjects of Afghanistan are endowed with personal liberty and are prohibited from encroaching on the liberty of others.

Article 10

Personal freedom is immune from all forms of violation or encroachment. No person may be arrested or punished other than pursuant to an order issued by a Shari'a court or in accordance with the provisions of appropriate laws. The principle of slavery is completely abolished. No man or woman can employ others as slaves.

Article 11

The press and the publication of domestic newspapers is free in accordance with the appropriate press law. The right to publish newspapers is reserved to the government and to citizens of Afghanistan. Foreign publication may be regulated or restricted by the government

Article 12

Subjects of Afghanistan shall have the right to organize private companies for purposes of commerce, industry and agriculture, in accordance with the provisions of the respective laws.

Article 13

Subjects of Afghanistan shall have the right to submit individual or collective petitions to government officials for the redress of acts committed by officials or other against the Shari'a or other laws of the country. In appropriate cases if such petitions are not heeded citizens may appeal successively to higher authorities and in case they still feel aggrieved they may appeal directly to the King.

Article 14

Every subject of Afghanistan has the right to an education at no cost and in accordance with the approved curriculum. Foreigners are not permitted to operate schools in Afghanistan but are not barred from being employed as teachers.

Article 15

All schools in Afghanistan are under the control, supervision and inspection of the government which is charged with developing the scientific and national education of all citizens on the basis of unity and discipline but the methods and teaching of the beliefs and religions of protected and refugee subjects (Hindus and Jews) shall not be interfered with.

Article 16

All subjects of Afghanistan have equal rights and duties to the country in accordance with Shari'a and the laws of the State.

Article 17

All subjects of Afghanistan shall be eligible for employment in the civil service in accordance with their qualifications and abilities and with the needs of the government.

Article 18

All determined forms of taxation are to be collected in accordance to appropriate laws and in proportion to the wealth and power of the citizen.

Article 19

In Afghanistan everyone's real and personal property in his possession is protected. If real property is required by the government for a public purpose then in accordance with the provisions of a special law, first the price of the property shall be paid and then it may be expropriated.

Article 20

The dwellings and homes of all Afghan subjects are sacrosanct and neither government officials nor others may violate a subject's home without his permission or due process of law.

Article 21

In the courts of justice all disputes and cases will be decided in accordance with the principles of Shari'a and of general civil and criminal laws.

Article 22

Confiscation and forced labor is absolutely prohibited except that during time of war labor services may be required in accordance with the provisions of appropriate laws.

Article 23.

Except as provided in the laws of the State (Nizamnamat) nothing will be requisitioned from anybody.

Article 24

All types of torture are hereby prohibited. No punishment may be imposed upon any person except as provided in the General Penal Code and the Military Penal Code. (See Appendix for later amendment of this article).

Ministers

Article 25

The responsibility for the administration of the government is vested in the Council of Ministers and Independent Departments (Idarah-ye-Mustaqel). The Chairman of the Council of Ministers is His Majesty the King. In his absence the acting chairman will be the Prime Minister or in his absence the Minister heading the ranking Ministry. (See Appendix for amendment of this article)

Article 26

When an Acting Minister is appointed in the absence of a Minister, the Acting Minister will have all the authority and rights of the Minister.

Article 27

A special High Assembly (Darbar-e-Ali) will be convened each year before the Independence celebrations on a day to be determined by His Majesty the King. This Assembly will be under the chairmanship of His Majesty and will be composed of the high officials of the government, the elders of the people, the nobles and other specially by the King. In this Assembly every Minister and the Heads of Independent Departments will report in open session on the achievements and services rendered during the past year.

Article 28

His Majesty the King will select and appoint the Prime Minister and other Ministers.

Article 29

The Council of Ministers will formulate the foreign and domestic policies of the government. Decisions of the Council of Ministers, treaties, agreements and other matters that may require ratification by His Majesty the King will become effective only after such ratification.

Article 30

Every Minister will execute the duties appropriate to his ministry to the full extent of his authority. Matters appropriate for decision by the King will be referred to him and matters governed by the regulations of the Council of Ministers will be referred to it. The Council of Ministers will discuss the matters referred to it in accordance with its special law and sign the solution and views expressed by the Council.

Article 31

All Ministers are responsible to His Majesty the King both regarding the general policy of the government as a whole and the individual responsibilities of the Minister himself.

Article 32

Oral communications and commands from His Majesty the King to Ministers should be reduced to writing and signed by the King.

Article 33

Trials for official misconduct of Ministers will take place before the High Court (Diwan-e-Ali) in accordance with the special law on this matter. Trials for personal misconduct outside the purview of their official duties will take place in the courts of justice as for ordinary citizens.

Article 34.

A Minister who is accused before the High Court will be suspended from his official duties pending the outcome and acquittal in his trial.

Article 35

The size and organization of the various ministries and their offices and duties are prescribed in the law entitled Basic Organization of the Government of Afghanistan (Nizamnamah-ye-Tashkilat-e-Asasiyah-e-Afghanistan).

Government Officials

Article 36

Officials will be appointed on the basis of competence and in accordance with the appropriate laws. No official can be dismissed unless he resigns or for misconduct or for the best interest of the government. Officials who maintain good performance records will be considered worthy of promotion and eventual pension.

Article 37

Duties of officials have been described in appropriate legislation. Every official will be responsible for the performance of his duties in accordance with such legislation.

Article 38

All officials are required to obey the lawful orders of their superiors. If an order is deemed by an official to be without sanction of law it is his duty to refer the matter to the central authorities of his ministry. If he executes such an illegal order without first having referred it to the central authority of his ministry, he will be considered to be equally responsible with the official who gave the order.

Provincial Councils and the State Council

Article 39

There is hereby established a State Council in the capital of the kingdom and local Councils in the provincial and district centers, these councils to act as advisory bodies. (Translator's Note: District centers consisted of 5 different levels less important than a province. These were (1) Huqumat-e-'Ala or "High Governorship which was equivalent to a province but smaller or less important; (2) Huqumatis of 1st 2nd and 3rd degrees which depended from the Provincial or Huqumati-e-'Ala governments; and (3) Alaqadaris or Districts which depended from the Huqumatis).

Article 40

Membership in the State and Local Advisory Councils consists of both appointed and elected members.

Article 41

Appointed members of the advisory councils are those officials enumerated in the Law on the Basic Organization of the Government of Afghanistan. The appointed members of the State Council are directly selected and appointed by the King. The number of appointed members will be equal to the number of elected members. The elected members will be selected and appointed by the people. Separate articles in the Law on the Basic Organization of the Government of Afghanistan prescribe the election procedures for these members.

Article 42

The State and Local Councils in addition to those duties prescribed in the Basic Organization Law will:

- a) Make suggestions to the government for the improvement of industry, commerce, agriculture and education.
- b) Petition the government regarding any irregularities in matters of taxation or general government administration with a view to demanding remedial action. (Note See Appendix for later Amendment to this Section.)
- c) Complain to the government regarding any violations of the basic rights conferred upon the people by this Constitution.

Article 43

Suggestions, petitions or complaints by the Advisory Councils will be presented in the first instance to the Governor or executive official of the district pertaining to the Council. Such Governor or other local official will take appropriate measures within the scope of his authority. If such measures would go beyond the scope of his authority he will forward the matter to the appropriate ministry which in turn will take the necessary action or in appropriate cases will proceed in accordance with article 30 hereof or if the matter be one of a legal nature then in accordance with article 46 hereof.

Article 44

If within a month after presenting a petition, suggestion or complaint to the Governor or other local official, the Advisory Council has not received a reply, it may on its own initiative forward the matter directly to the State Council.

Article 45

The State Council will thereupon prepare an opinion on the case and forward it to the appropriate ministry. If the ministry delays action of the case the State Council may forward it directly to His Majesty the King.

Article 46

Legislation prepared and proposed by the government will scrutinized by the State Council and then passed to the Council of Ministers for further examination. If approved in both bodies they may then forward it to His Majesty the King for ratification, after which such legislation becomes the law of the land.

Article 47

In addition to the permanent appointed member of the State Council, certain top ranking civil servants and military officials above the rank of district and provincial governors and governors-general and from the military rank of Lewa Mishr (Brigadier General) respectively, may be appointed as temporary members of the State Council until their appointment to a new post, provided they have not been relieved from duty awaiting trial.

Article 48

The State Council will review the yearly budget prepared by the Ministry of Finance in the manner prescribed in the General Law of the Budget (Nizamnamah-ye-Bujet) .

Article 49

The State Council will review all contracts and treaties and agreements made between the government and foreigners.

The Courts

Article 50

All trials in courts of justice will be open provided that for certain special matters enumerated in in the General Law on Courts (Nizamnamah-ye-Mohakem), the judge may prescribe an closed trial.

Article 51

Every citizen of person appearing before a court of jutice may use any legitimate means to insure protection of his rights.

Article 52

Courts of Justice will not delay the hearing and settling of cases which it their duty to hear.

Article 53

All courts of justice are free from all types of interference and intervention.

Article 54

The various types and hierarchy of courts are set forth in the Law on the Basic Organization of the Government of Afghanistan.

Article 55

No special court to hear and adjudicate a special case or issue may be established outside the framework of the regular judiciary.

The High Court

Article 56

A High Court will be established on a temporary basis from time to time for the special purpose of trials of Ministers. After completing its task it will be dissolved.

Article 57

The organization and procedures of the High Court will be prescribed in a special law.

Financial Affairs

Article 58

Collection of all State taxes will be in accordance with the general laws on taxation.

Article 59

A yearly budget detailing the income and expenditures of the government will be prepared and all revenues and expenditures of the government will be in accordance with the budget.

Article 60

At the end of each year a financial report will be prepared relating actual revenues and expenditures of the previous year to those detailed in the budget.

Article 61

In accordance with a special law passed for this purpose, an auditing office will be established. The principal function of the auditing office will be to inquire and report whether the revenues and expenditures of the government have actually coincided with those prescribed in the budget. These possibilities have been set forth in the special law on auditing (Sizannamah-ye-Mahsabat).

Article 62

The organization and implementation of the financial report and of the budget is prescribed in a special law passed for this purpose. Disobedience and rebellion are considered to disturb the

The Administration of Provinces

Article 63

Provincial administration is based on three basic principles: (1) Decentralization of authority; (2) Clear delineation of duties; (3) Clear determination of responsibilities. All the duties of provincial officials have been determined on the basis of the above principles and in accordance with the pertinent laws. The authority of these officials is likewise limited by these principles and laws and every official is responsible to his superior on the same basis.

Article 64

Branch offices of the ministries are established in the provinces and citizens, depending on the subject matter, should initially have recourse to these branch offices for help in solving their problems.

Article 65

If the solution of the problems of the citizens cannot be found by the officials of these ministry branches, or if these officials do not dispose of the case in accordance with the laws, the aggrieved citizen may have recourse to the superior officials of the ministry branches or if necessary to the District and Provincial governors or governors-general.

Article 66

The organization, functions and duties of municipalities have been set forth in the special law on Municipalities (Nizamnamah-ye-Baladiyah).

Article 67

Military government and military administration may be proclaimed by the government in any part of the country in which signs of disobedience and rebellion are such as to disturb the public security.

Miscellaneous Articles

Article 68

Elementary education is compulsory for all citizens of Afghanistan. The various curricula and branches of knowledge are detailed in a special law and they will be implemented.

Article 69

None of the articles of this Constitution may be cancelled or suspended for whatever reason or cause.

Article 70

This Constitution may be amended in case of necessity upon proposal of two-thirds of the members of the State Council followed by approval of the Council of Ministers and ratification by His Majesty the King.

Article 71

If necessary any clarification of interpretation of any article of this Constitution or other laws of the State must be referred to the Council of State and following correction and explanation by the Council of State and approval by the Council of Ministers it will be printed and published.

Article 72

In the process of legislation the actual living conditions of the people, the exigencies of the time and particularly the requirements of the laws of Shari'a will be given careful consideration.

Article 73

Security of personal correspondence is one of the rights of all citizens and all communications handled by the post office will be secure from search and inspection and will be delivered to the addressee in the same condition they were received unless a court order has been issued permitting inspection.

The articles of this Constitution have been approved unanimously by the Ministers of the Government and by all the representatives of the nation gathered in a Grand Council (Loya Jirgah) in the Eastern Province (Mashriqi) and 872 members of that Grand Council have signed and sealed this document for the successful foundation of the exalted state of Afghanistan. It is our will and command that this Constitution be included among the other laws of the Government and that all its articles be implemented.

(see 1 of King Amanullah)

1. Article 2 - It is decided by the King that this Persian translation corresponds to the original and its official document in Pushtu.

A P P E N D I X

THE AMENDED CONSTITUTION

The Constitution of Hamal 20, 1302 - April 9, 1923, was amended by the Loya Jirgah which met in Paghman in 1924. The amended text became effective on Dalw 8, 1303 - January 28, 1925.

The amendments were a direct result of the rebellion of the Mangal tribe in 1924. This rebellion was given a religious flavor by certain religious leaders who sided with the rebels. King Amanullah in order to expose this offered to send a delegation of religious scholars from Kabul to discuss the objections of the Mangal mullahs and promised to make any changes agreed upon. The discussion took place but no agreement was reached it becoming evident that the tribal mullahs simply wanted pretexts to justify the rebellion. Nevertheless Amanullah's delegates on returning to Kabul recommended that certain provisions of the Constitution and of some laws be changed so as to remove all pretext for opposition. The King then summoned a Loya Jirgah which met in Paghman at the end of 1924 and recommended certain amendments and changes. The amended Constitution was then re-issued with the following imprimatur by the King:

"The Articles of this Constitution which were approved unanimously by the Ministers of the Government and the representatives of the Grand Council which met in the Eastern Province for the foundation of the exalted state of Afghanistan, have also been presented to the Grand Council of Paghman and in accordance with the votes of the Ministers of the Government and all the representatives of the nation including scholars, sadats and other religious leaders, these articles have been approved. Dalw 8, 1303. "

(Seal of King Amanullah) before

Following are the substantive differences between the original and the amended versions of the Constitution:

1. Article 2 is amended by adding to the provision that the "religion of Afghanistan is the sacred religion of Islam" the following: "and its official religious rite is the sublime Hanefite rite."
- Also added at the end of the article is the provision that "Hindus and Jews must pay the special tax and wear distinctive clothing".

NOTE Amanullah had tried to minimize Sunni-Shaah distinctions by the original wording. The amendment was designed to pacify the majority Sunni sect. Amanullah had also tried to integrate Hindus and Jews most of whom had lived in Afghanistan for many generations into the body politic. Religious sentiment was against this. In fact Hindus, specially Sikhs who constituted most of the community already wore their own distinctive turbans. So far as is known Jews never wore any distinctive clothing in spite of the constitutional amendment

2. Article 9 is amended by adding the following: "Afghan subjects are bound by the religious rite and political institutions of Afghanistan".

NOTE In its original version it is clear that the intent was to eliminate invidious discrimination on the basis of religion, or other similar distinctions. The amendment in effect places a religious limit on the freedom of the citizen. Moreover it is ambiguous as it could be interpreted to mean that all citizens must be Muslims of the Hanefite rite. This apparently was not intended, the only meaning, judging from subsequent practice, being that all citizens of whatever creed must respect the fact that the state religion was Hanefite and Sunni.

3. Article 24 is amended by adding at the end of the article the following: "except those punishments which are in accordance with the rules of the Shari'a and which are in accord with other public laws which are themselves a codified according to the rules of Shari'a".

NOTE The intent of the original article was to secularize and bring uniformity to criminal punishments by prescribing them in the Penal Codes (both civilian and military). This encroached on the traditional prerogative of the Qazis to prescribe punishments allegedly sanctioned by Shari'a which in fact differed according to the individual Qazi. The amendment thus restores to the Qazis the right to impose varying and individual punishments so long as they are sanctioned in the Shari'a.

4. Article 25 is amended by removing the word "acting" before the word chairman when referring to the Prime Minister in this capacity in the absence of the King. The reason for this amendment is obscure and seems to be based on considerations of personal relations between the King and the Prime Minister at the time.

5. Article 42 (b) is amended by adding the word State in front of the word taxation. Apparently, according to some sources the purpose was to spare the central government from complaints about local taxes. According to other sources the purpose was to clarify the position that the taxing power was vested only in the state and was not to be used by officials or local chiefs, etc.