



Center for Strategic & Regional Studies Kabul

Weekly Analysis-Issue Number **236** (January 6 - 13, 2018)

Weekly Analysis is one of CSRS’ publications, which significantly analyses weekly economic and political events in Afghanistan and the region. The prime motive behind this is to provide strategic insights and policy solutions to decision-making institutions and individuals in order to help them to design best policies. Weekly Analysis is published in local languages (Pashto and Dari) and international languages (English and Arabic).

In this issue:

Preface..... 2

A glimpse to the implementation and violation of the Afghan constitution 3

The Afghan Constitution 4

The violation of the constitution 4

The most important factors behind the violation of the constitution 6

Conclusion 6

The US-Pakistan tenuous relations and its impacts on Afghanistan. 8

Islamabad-Washington ties; under the influence of geopolitics..... 9

Trump’s strategy towards Pakistan 9

Pakistan and the US; reliant on each other10

The impact of Pak-US relations on Afghanistan11

The upcoming Conference: Bilateral relations between Kabul and Beijing 12

Preface

In the past 14 years, there always were criticisms regarding the violation of the Afghan constitution, as last week such criticism were made once again.

14 years ago, when the Taliban regime was overthrown, with the help of international community, and the new Afghan government was formed, the approval of the constitution was an important achievement. Although the constitution is presumed as a redline in the Afghan government's negotiations with the Taliban, it has been violated widely.

Why the constitution was not implemented properly in the past 15 years? What are the cases of its violation? What are the solutions? These are the questions that are analyzed in the first part of the Weekly Analysis of the Center for Strategic and Regional Studies (CSRS).

In the second part of the analysis, you would read about the increasingly tenuous relations between the US and Pakistan. In the past 15 years, the Pak-American relations were good and Pakistan was assumed US's partner in the region. Since Trump's coming to power in the US, relations between Islamabad and Washington have started to deteriorate and since the beginning of 2018, these relations are at most its tenuous levels ever. To which direction are the Pak-American relations headed? What are the impacts of these relations on Afghanistan? These are the questions that analyzed in the second part of the analysis.

At the end of the analysis, you would read an announcement of an upcoming conference to discuss bilateral relations between Afghanistan and China.

A glimpse to the implementation and violation of the Afghan constitution



Fourteen years ago, the current Afghan constitution was approved by Loya Jirga and was signed by Hamid Karzai, the then Head of the interim government.

The Afghan constitution is assumed one of the achievements of the current regime and is the most important legal document in the country; nevertheless, in the past 14 years, there have always been criticisms about violating and not implementing it.

The senior authorities of the country also accept that the constitution was widely violated. In a message, due to the Constitution Week, the Second Vice President Sarwar Danish said that the violation of the provisions of the constitution has become widespread in the country.

The results of a recent research also show that 94 out of 162 articles of the Afghan constitution have been broken.

How much the Afghan constitution was implemented in the past 14 years? What are the most important factors behind the violation of the constitution? These are the questions that are analyze here.

The Afghan Constitution

Afghanistan is one of the countries, where many constitutions have been developed and approved. The current Afghan constitution, which is a result of the Bonn Accords, is the eighth constitution of Afghanistan.

The first Afghan constitution was drafted in 1301 [solar year] during the reign of Amanullah Khan and was approved by a Loya Jirga in 1303 [solar year]. This constitution had 73 articles.

The second constitution was prepared in 1309 during the kingdom of Mohammad Nader Khan, the third in 1343 [solar year] in Mohammad Zaher Shah's Kingdom, the fourth in 1355 [solar year] in Mohammad Dauod Khan's Presidency, the fifth in 1359 [solar year] by the Khalq Democratic party, the sixth and the seventh were approved in 1366 and 1369 [solar years] by the government of Dr. Najibullah, the later was an amendment of the former. The current Afghan constitution was developed in 1382 [solar year] by Loya Jirga and was approved by the head of the Afghan interim government Hamid Karzai.

The current constitution was prepared after the collapse of the Taliban regime and with the establishment of the new regime in the country. This constitution has been approved by a Loya Jirga in 12 chapters and 162 Articles and it was signed by Hamid Karzai on 6 Dalw 1382 [solar year and month].

The violation of the constitution

The Afghan constitution, which somehow manages all the affairs in the country and provides the way for people's monitoring of the government, has been widely violated in the past 14 years.

Overall, from the government organizations to the individual citizens of the country have been involved in the violation of the constitution in the country, as the Second Vice President spoke about the violation of constitution last week and said that lack of sufficient capacity to implement the law was one of the main reasons behind it.

In the most recent joint research report of the Afghan Lawyers' Association and Pajhwak News Agency, on 8 January 2018, it is stated that in the past 14 years, 94 Articles of the Afghan constitution were violated. Based on this research, more than half of the provisions of the constitution (58%) have been violated and only from the 38 articles of the Second Chapter, which is about the Afghan citizens, 32 were broken. According to this research, the President and the Vice Presidents were also among the people that had violated the constitution about of their authorities.

In addition, in the past years, the reports of several researches were released by the non-governmental organizations suggesting that the government had not only failed to implement the constitution but also it had been involved in its violation.

For instance, the Article 71 of the constitution states: "The government is formed of the ministers and is headed by the President," while the National Unity Government (NUG) is formed with breaking the Afghan constitution. Moreover, recently there was a major argument regarding using the term "Afghan" to address all the people who took electronic ID cards, while Article 4 of the Afghan constitution states: "Every individual of the Afghan nation is an 'Afghan'."

Although the issue of violating more than half of the provisions of the constitution seems like an exaggeration, there exist many examples of violating the constitution during the Hamid Karzai's government and later-on during the NUG, some instances of these violations question the legality of the regime.

Not holding the elections on its specified date, extending the work period of Wolesi Jirga, the acting ministers' continuation of work, extending the work period of members of the Judiciary Branch, limitation of the area that the law could be implemented, extending the work period of the President, misusing the authorities, intervention of the members of Parliament in areas out of their authority, improper behavior with criminals and dozen other examples can be mentioned as examples of the constitution's violation in the country.

The most important factors behind the violation of the constitution

The following are some of the most important reasons behind the violation of the constitution:

First; at high levels, internal differences and overall the confrontation between the interests of the political circles in the country have led to the violation of the constitution.

Second; the existence of corruption and powerful people in the structure of the government is another factor that prevents the law from being implemented.

Third; the worst security situation and lack of instability is another factor behind the problem mentioned above.

Fourth; lack of political willingness, monitoring, and suitable response mechanism is another factor behind the violation of the constitution. The Independent Commission of Observing the Implementation of the Constitution is one of the weak institutions that has failed to play an efficient role in this regard. It is at a time that the President, as the protector of the constitution, is engaged in its violation and the Judiciary branch has also violated the constitution for several times.

Fifth; the violation of the provisions of the constitution by the public has vastly been due to the lack of public awareness regarding the laws.

Conclusion

The Afghan constitution is widely violated by the government and the people at a time that in the past one and half decades, accepting the constitution was raised as a redline precondition of the Afghan government in its peace talks with the Taliban.

The dominant culture of breaking the law, political instability, and security instability have resulted in the violation of the constitution by both the government and the people.

Therefore, while from the government authorities to the citizens of the country and from the private institutions to public institutions have all been involved in the violation of the constitution, no serious reactions have been seen in its protest. Currently, it seems that there is a serious need to raise public awareness regarding the laws and promote law-monitoring and implementing organs.

The US-Pakistan tenuous relations and its impacts on Afghanistan



Since the first day of January 2018, a new phase has started in Washington-Islamabad relations. For the first time, the US President took a harsh stance towards Pakistan and criticized this country in one of his Tweeter posts. After this Tweet, the US National Security Advisor General Mac Master also said that Trump was disappointed of and unsatisfied from Pakistan's performance. In the meanwhile, the US representative in the UN also accused Pakistan of playing double politics.

Trump's tweet regarding Pakistan raised serious reactions in Pakistan. From the Pakistani army to Pakistani politicians, all condemned this new strategy of the US. Pakistan not only summoned the US Ambassador but also called an emergency meeting of the cabinet to discuss Trump's new stance.

On the other hand, the former and current officials in Afghanistan have all backed this new policy and have expressed hope that the US will take practical steps.

From what stages have the US-Pakistan ties passed? What are the main factors in bringing the two countries close to and far from each other? What will be the impact of the recent developments in Washington-Islamabad relations on Afghanistan? These are the questions that are analyzed here.

Islamabad-Washington ties; under the influence of geopolitics

The past 7 decades of relations between Islamabad and Washinton have been full of ups and downs. At two times, the US and Pakistan came very close to each other and that was due to the geopolitics of the region. First, during the Cold War, when the two countries entered a strategic partnership against the communist bloc. The SEATO and CENTO coalitions were also formed during this period.

However, the 1965 and 1971 wars between India and Pakistan caused Pakistan to get out of thess coalitions. At that time, relations between the US and Pakistan was deteriorated. Pakistanis claimed that the US did not support Pakistan during the Indian-Pakistan wars. Nevertheless, when the Soviet Union attacked Afghanistan, relations between Washington and Islamabad improved, which lasted until the withdrawal of the Soviet troops from Afghanistan.

The second phase of mutual relations between the two countries started when the US attacked Afghanistan in 2001. Although these relations experienced many ups and downs during this period, but it has never been as tenuous as it is in 2018.

Trump's strategy towards Pakistan

The US President had criticized Pakistan before his election compaigns but during the American elections, both of leading condidates mostly avoided bringing the issue of Afghanistan and Pakistan up.

It become one year since Trump took power in the US, but during this time the Pak-American ties were more tenuous than that of Bush and Obama's presidencies. During this period, Trump has vastly expressed doubts regarding Pakistan's role against extrimists and has criticized it. Trump praised Pakistan only

at the time of releasing an American wife and a Canadian husband, who were captive with Haqani Network, at that time it seemed that the US would not suspend its military and financial support to Pakistan.

Unlike the estimations mentioned above, at the first day of 2018, Trump wrote on his tweeter page: “The United States has foolishly given Pakistan more than 33 billion dollars in aid over the last 15 years, and they have given us nothing but lies and deceit, thinking of our leaders as fools. They give safe haven to the terrorists we hunt in Afghanistan, with little help. No more!”. Thus, the US stopped its military support to Pakistan and now the US-Pakistan relations are highly tenuous.

Pakistan and the US; reliant on each other

Pakistan and the US need each other in dealing with the issues in the region and particularly in Afghanistan. Since 2001, the US has provided more than 33 billion dollars in aid for Pakistan, mostly military support. Pakistan cannot find an alternative for these military and economic aids. Although Pakistan has a strategic partnership with China, but China may not be able to provide Pakistan with the military aids and technology that the US does (particularly considering the distance between the US and Chinese technology.)

On the other hand, in Afghanistan, the US needs Pakistan. Although the US is concerned about Pakistan’s support of the Afghan government’s armed oppositions, this country may also realize that still its transit and logistic way passes through Pakistan. Therefore, the issue of transit is a challenge for Washington and Kabul. Nevertheless, it is arguable whether which way will the US pick for transit purposes after the closure of the Pakistan route. The US has tenuous relations with Iran as well and transit through Russia and Central Asia also seems impossible because between 2008 and 2012, Russia had allowed the US to transit tools other than weaponry through this path.

The impact of Pak-US relations on Afghanistan

If one looks at the current tenuous relations between the US and Pakistan, one will find out that, besides Pakistan, it puts great impacts on Afghanistan as well:

First; although the issue of Pakistan's support from the Afghan government's armed oppositions is raised all the way back since 15 years ago, if the distance between Washington and Islamabad further increases, Pakistan's support from the Afghan government's armed oppositions may increase as well, and the armed groups may receive some hidden and evident privileges on behalf of Pakistan, something that was not openly done in the past one and half decade.

Second; the closure of the transit way will be the other challenge that the US would face. However, if the US succeeded in finding an alternative way, it is most probable that it will increase its pressures on Pakistan. This issue must be seen with the consideration of the fact that the US has tenuous relations with Iran, and transit through Central Asia, Russia, Turkmenistan, Georgia, and Europe also seems impossible. Moreover, transit and transport through air from Central Asia and India to Afghanistan do not seem practical either.

The upcoming Conference: Bilateral relations between Kabul and Beijing

The research conference “the Afghan-Sino bilateral relations” is to be held in Kabul.

In this conference, which will be held by the Center for Strategic and Regional Studies (CSRS), the mutual relations between the two countries as well as China’s role in the recent geopolitical changes in the region will be discussed.

Moreover, the book “Afghanistan and China; The Bilateral Relations 1955-2015” will also be reviewed. In this book, besides the background of historic relations between the two countries, the political and economic relations between the two countries are also assessed.

It is mention-worthy that this book also contains recommendations regarding the mutual relations between the two countries.

The End

Contact Us:

Email: info@csrskabul.com - csrskabul@gmail.com

Website: www.csrskabul.com - www.csrskabul.net

Office: (+93) 784089590

Contact with Officials:

Dr. AbdulBaqi Amin, General Director of CSRS: (+93) 789316120 abdulbaqi123@hotmail.com

Hekmatullah Zaland, Senior Manager: (+93) 775454048 hekmat.zaland@gmail.com

Note: Please let us know your feedback and suggestions for the improvement of Weekly analysis.

