

# Historical Development of Administrative Law: An Afghan Perspective

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**Abstract:** *Administrative law is a branch of public law that legitimises government authority. It ensures government bodies are acting fairly and legally. This study illustrates the most predominant factors that influenced the development of administrative law. Through a library research approach, the study explains that administrative law has been developed through four paths: administrative procedures, constitutionalising, adjudication, and statutory. formation of administrative procedures influenced the subsequent development of administrative law. To ensure the government actions are legal and accountable, the administrative law is constitutionalised through the constitutional guidelines and judicial review. Judicial review referred to the court procedure that examines the legality of judgements and actions of public entities to ensure they follow their procedures and administrative law regulating the actions and powers of those public entities. Statutory law is the law that is enacted by the legislative branch, and administrative law regulates the actions of public agencies and enforces the statutes. Development of administrative law resulted in the separation of power in modern states. Alongside the four tracks, administrative law development in Afghanistan has been influenced by quick regime changes from the Democratic Republic of Afghanistan (1980 to 1987), which was a secular and Marxist-style regime, to Mujahidin and Taliban regimes which proclaimed themselves as pure Islamic states.*

**Keywords:** Administrative law, Historical Development, Afghanistan

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## 1. Introduction

Administrative law is a branch of law under public law that governs the administration and regulation of the government agencies of both central and local governments. Administrative law is a mechanism designed to examine and regulate administrative affairs (Harrington & Carter, 2015). Administrative law gives legitimacy to state actions, and it is not limited to the authority of bureaucratic government; thereafter, this branch of law holds executive power and public entities accountable under the law (Craig, 2016).

The explanation of administrative law begins with a legal process sketch in general. It is a legal process that illustrates that government agencies operate within the designed legal framework and that exceeding it would be regarded as a violation of the law.

The establishment of administrative law is referred to as the modernisation of nations. Societies began to make several efforts to limit the government's prerogative power that demanded the

separation of power, such as the need for the existence of parliaments to obtain the delegation of people and practice power on people's behalf (SAGE Publications, 2015).

In a modern state, the administrative domain is where “the rubber meets the road”. The “friction” of political and social resistance is created when attempts are made to enact legislative goals at this interface between the state and society (Peerenboom, 2001).

Hence, this paper aims to explore the development of administrative law with an Afghan perspective.

## **2. Methodology**

This research adopts a library-based method where law books and journals will be referred to and analysed to explore the development of administrative law with an Afghan perspective. The data presentation in research is based on chronological order.

The library method was used to scrutinise the current data available, focussing on the development of administrative law in several countries and eras, including administrative law during the Roman Era, Ancient Egypt, ancient China, the United States of America (USA), and Afghanistan as a focus point. The development of administrative law in Afghanistan includes the Amani Era (during King Amanullah Khan) and, after independence, the first republic government (President Daoud Khan), during communism, under the first Taliban regime, and during the Islamic Republic.

## **3. Administration Law in Roman Era**

The origin of administrative law in the Roman Era can be traced back to the formation of administrative procedures in Ancient Rome, which remarkably influenced the subsequent development of law (Carozza et al., 2025). Roman law was received by Europe and became the foundation for the development of numerous branches of law in the Middle Ages (Carozza et al., 2025).

Roman law distinguished between public and private domains (*Ius publicum* and *Ius privatum*). The process of administrative law was shaped by the formation of Roman law in the “Period of Kings” (625–510 BC), which saw the centralisation of power and the division of social norms into customary and positive law (Daguet-Gagey, 2009), (i.e., the time that people began to enact laws that oblige or specify an action).

The formation of the social-political system and the division of the Roman population into Genu and family (Genu is a taxonomic rank to classify people based on their biological futures), the formation of social classes of patricians, plebeians (free Roman citizens), and proletarians (wage-earners), the centralisation of power in the hands of an elected monarch, the administration of the state through the Senate, and the formation of a troop split into centuries, which subsequently turned into a separate social class and represented the interests of the people and had a significant impact on the state power of Rome (Rose-Ackerman & Lindseth, 2010). Moreover, the division of social norms into customary and positive law alongside sacred law resulted in the formation of sources for administrative law: custom and law. The custom appeared first, which is a moral generated in the minds of humans, and then the law, which is accompanied by the development of the states and society's so-called written law, secured by the authority of legitimate government. Furthermore, in Ancient Rome, criminal law began to be formed as a means of ensuring the interests of society. The main principles and concepts of Roman criminal law are “the principles of the Talion” and the court of Lynch (Colognesi, 2018)

(i.e., a self-constituted court that imposes a sentence on a person without due process of law). The principles of the Talion were developed in the early Babylonian law and are present in both Roman law and Biblical law that criminals should receive punishment for precisely those injuries and damages they had inflicted upon their victims (Rakar & Tičar, 2016).

However, according to traditions, the precise provisions of the legislation during the kings' period in the Roman Era are a subject of debate between scholars. Drawing on the early concepts, Rome was founded by Romulus in 753 B.C. and ruled by seven kings until the Tarquin's expulsion in 509 BCE, when the Roman monarchy was overthrown. Later, the authors attributed a considerable volume of legislation to these kings, particularly to Romulus and Numa Pompilius (Silk, 2004). Nonetheless, modern scholars have doubted these laws based on two justifications: first, it is maintained that at such an early time, laws would not be enacted by legislation; second, it is claimed that the law as described for the period could not then have existed but is either an invention of the history authors or the law of a later period that has been pushed back in time (Watson, 1972).

The ancient Roman administrative procedure began with the investigation of the people's lives and public revenues, known as "Inquisitio", which was a legal mechanism of trial in ancient Roman jurisprudence and has become the method of enforcing the Canon Law specifically regarding the heresy in the Catholic dominance. Magna Carta, which is a cornerstone of English law and later became the legal tradition of Britain, stood against investigating people's lives (Mehmeti, 2015). According to the Magna Carta, "Writ of Inquisition of life or body" formed the subject of an entire item in order that it might be granted freely and not denied. The Privy Council (which is an official body of advisers to the sovereign of the United Kingdom, who goes back to the earliest days of the monarchy) even provided some benefits for the public in the 16th and 17th centuries. According to legal historians, procedural branches precede the substantive in juridical evolution. This procedure has a positive impact on administrative law. The procedural mechanism and the rule governing it are the first to be advent. Both the substantive law and the procedure for which it stands point back to Ancient Rome; significantly, during the time of the Empire, important legal changes constantly occurred.

Caesar Augustus (27 BC to AD 14), the first emperor of Rome, directed that questions regarding the term of "fidei commissa" (authorisation that conveys a person's property to another and somehow resembles the terms of Anglican law) should be handled, not by the army commander or the elected officials, but by the consuls (Mahler, 2008).

Augustus also created the "Fiscus" (the Roman emperor's treasury, where money was saved in baskets), which took over certain functions of the Censor, to whom, under the public, fell the collection of revenue, which consisted of farming out the taxes to the highest bidder. Moreover, Tiberius Claudius Caesar Augustus, the "Emperor Claudius Caesar" (the fourth Roman emperor), who reigned from A.D. 41 to A.D. 54, was a law reformer and brought the grant of jurisdiction to the procurators of Fiscus, and whatever the date and sources of the grant, the fact seemed to be established as early as the first "Christian Century", when a purely administrative official was confirmed with judicial functions in a crucial branch of the police power and the public revenues (Jones, 1950).

The next significant reform in the Roman Empire was done by Emperor Claudius, improving the Roman judicial system by enacting laws to protect sick slaves, increase women's privileges, and extend citizenship (Millar, 2006).

The emperor brought numerous legal innovations. One of the procedural innovations was the “Inquisition”. The emperor’s honest passion for good government was displayed by an active consideration of the law courts, which the regular lawyer found most embarrassing.

Despite the legal reforms during the Roman Empire, censorship occurred, as the first Roman emperor established the Fiscus (Fiscus is derived from the Latin word “basket” and referred to the Roman emperor’s treasury, which was funded by revenues from forfeited property, imperial provinces, and unclaimed lands) and took over certain censors to collect taxes from remote areas and supervise public morality. In addition, Emperor Claudius centralised the administration, which is considered a controversial issue in democratic societies nowadays. (Bachagha et al., 2019).

#### **4. Administrative Law in Egypt**

Ancient Egypt had experienced a well-organised public administration, with the pharaoh at the centre and viziers reporting to him (Ajdini, 2014). One of the phenomena that ancient Egypt was dealing with was administrative corruption. Corruption originated from an old Latin word, “corruptus”, which is the past participle of “corrumpere”, meaning to bribe, mar, destroy, and damage (Kuru, 2022). The first ancient Egyptian Dynasty recognised corruption in its judiciary around 3100 to 2700 BC (Eyre, 2011).

Archaeological researchers denoted that the ancient Egyptians recognised corruption and enacted legislations and strict laws to tackle it that were aimed at preserving the values and appreciating the principles of ancient Egyptian society. The ancient Egyptian texts denote morality and combating crime with various penalties as the foundation of ancient Egyptian society (The Pyramid Texts – World History Encyclopedia). Moreover, crime and punishment in ancient Egypt were related to ethical, religious and customary factors, all of which were Ma’at (an Egyptian concept of balance, order, harmony, truth, law and justice), which pointed to trust and justice in society and the existence of administrative procedures.

Alongside the ethical concepts in the society, the administrative bureaucracy in the ancient Egyptian state recognised bribery and combated it, as the judicial bodies were not safe from it, and the punishment for it was dismissal from office and lowering the person to the rank of agricultural or mining labour.

Furthermore, archaeologists claimed that the ancient Egyptians combated temple thefts from any attack by implementing penalties, including in the decree of King Menmaatre Seti I of the Nineteenth Egyptian Dynasty (Egypt, 2024). In addition, the ancient Egyptians enacted harsh punishments for those who committed corruption and treason. The decree of King Seti I also referred to execution for those who steal animals belonging to the temples and transfer them to other parties while confiscating the property of the thieves in favour of the stolen temples.

As for stealing animals from temples without transferring them to other parties, the punishment was stumping the thieves' noses and harnessing them and their families to serve the temples. Ancient Egyptian law also illustrates that a prosecutor or a judge who is slow in the progress of the prosecution and proceedings shall be punished with a hundred strokes, and they shall be removed from their positions and lowered to the ranks of lesser positions (El-Saady, 1998).

Moreover, the execution of justice in the Middle Ages in Egypt involved numerous judicial institutions, including the court of complaints, the *cadi* (i.e., a judge in Islamic law.), the

Islamised market law and the police. During the early Middle Ages, the model of adjudication combined four institutions: the court of complaints (mazalim), the *cadi*, the police (Shurta), and Islamised market law (Hisba), regulated by *muhtasibs* (the market supervisors). According to literary and non-literary sources, these four institutions functioned in actual circumstances such as the “famine time of 1024–1025”, which was caused by climate shifting, and made enormous amendments to both market law and political society (Chipman et al., 2021). Nonetheless, the sources of administrative law in ancient Egypt, including the functions of courts and the method of application, are not clearly defined. Throughout the years, Egypt has become one of the leading states with dual legal systems of Shariah law and Napoleonic Code.

## 5. Administrative Corruption Law in China

The development of administrative law in China has been shaped by both traditional and modern elements. The studies illustrate that while China lacked a contemporary administrative legal framework, it did have intricate regulations governing the authorities and functions of imperial authorities (Chen, 2020).

Traditional China lacked “administrative law” in the contemporary sense of a branch of law created by legislation of the judiciary that empowers and constrains state organs and officials in order to protect the rights and fundamental liberties of citizens. However, there were intricate and sophisticated regulations that prescribed in detail the duties of officials as well as the various and complex monitoring, supervisory, and disciplinary mechanisms applicable to the exercise of powers and performance of duties by officials in various state organs. Those regulations governed the powers and functions of each component of the highly complex and extensive machinery of imperial organs and officials for more than two millennia. China was a dynastic empire during the last two millennia, ruled by an emperor with the help of a highly developed Mandarin (Mandarin bureaucrat) of imperial organs.

By the late 19th century, the Qing Dynasty had increased subordination to Western imperialism, and semi-colonialism persuaded a sizable portion of Chinese political and scholarly elites that there was a need for China to “save” and strengthen itself by pursuing modernisation (Chen, 2020). Most of the legal and political elements were extensively borrowed or translated from Western political and legal institutions. After China was defeated by Japan in the First Sino-Japanese War of 1894–1895 (Kim, 2012), the Japanese modern administrative system was extremely admired by Chinese elites, and it was believed that China ought to follow its self-strengthening efforts.

The rule of law has become a popular element in Chinese society since adopting modern regulations through the third amendment to the Chinese constitution in 1999. After the transition of the leadership from the third generation to the so-called fourth generation in China, a sizable number of new regulations were issued in April 2004 (Keyuan, 2006), beginning a new era of administrative reform. Then the Chinese government committed to having established a rule-of-law administration by 2015. In China, administrative law has become an appealing solution to problems involving principles and public servants.

## 6. Administrative Law in the United States of America

The United States of America (USA) federal administrative law was formed from the early days of the republic with a focus on the accountability regimes of administrative efforts. In the USA, social, political, and economic transformation occurred mainly between 1890 and 1910. Administrative law was necessary to regulate the growing administrative power and ensure that it was not abused (Mashaw, 2009).

The origin of administrative law in the USA is a complicated and multifaceted topic (Mashaw, 2019). While the majority opinions date it back to the late 19th century, specifically the Interstate Commerce Commission (ICC) founding in 1887. While the conventional view places its beginnings in the late 19th century, particularly with the establishment of the ICC. Current researchers have challenged this point of view. Mashaw and Merrill both believed that the roots of administrative law in the USA can be traced back to the early years of the American republic, with former highlighting the Federalist period and the latter pointing to the emergence of the review of appeals model after 1906 (Merrill, 2011).

The foundation of the USA administrative law is grounded in a conception of relationships between agencies modelled and reviews of courts that is based on the relationship between trial courts and appeal courts in civil litigation. Although this appellate review model has had far-reaching effects and its origins are poorly understood, it was not an inevitable foundation of administrative law. Philip Hamburger, an American legal scholar, argues that American administrative law represents a return to pre-constitutional absolutism by linking its roots to the Royal Prerogative Tradition of mediaeval and early modern England (Hamburger, 2014).

Based on Hamburger's argument, the central question is, "Is administrative law unlawful?" in contemporary law and politics, and it has become all the more crucial with the enlargement of modern administrative states. Traditionally, Congress's acts and the courts were the only ways the federal government could restrict an individual's freedom. However, in recent years, the executive branch has gained more authority over Americans by enforcing its own administrative regulations and making decisions, thus posing unsettling queries regarding the impact of this kind of state authority on American politics and culture. In relation to "Is administrative law unlawful?" Hamburger provides a revisionist interpretation of administrative law in the affirmative. Rather than accepting it as novel authority required by contemporary society, he places its roots in the English Royal Prerogative tradition of the Middle Ages and early modern periods. Periodically, mediaeval parliaments attempted to limit the Crown's authority to governing according to regular laws; however, the creation of English constitutional law in the seventeenth century proved to be the most successful response, which concluded that the government could only exercise authority through the courts and the laws of the land, not by issuing decrees. Despite the USA Constitution's even more ardent pursuit of this outcome, administrative power reappeared during the Progressive and New Deal Eras (Goodman, 2004).

From then on, it is contended that American administrative law has returned the American government and society to promptly prevent the sort of consolidated power that the US Constitution and constitutions, in general, were designed to prevent. With a concise but layered argument based on legal thought and law, "Is administrative law unlawful?" reveals administrative law to be not benign, a natural by-product of contemporary government, but a dangerous return to pre-constitutional absolutism that is both pernicious and deeply illegal.

## 7. Historical Development of Administrative Law in Afghanistan

The development of administrative law in Afghanistan has faced challenges and turmoil during the different regimes in less than a century, from the first united and independent political unit (the Amani Government) to the previous U.S.-backed democratic government (Islamic Republic Government). The modernisation of Afghanistan's legal system, comprising the development of administrative law, began with the adoption of the 1931 Constitution, which integrated Western legal theories (Sirat, 1968). However, the development of administrative law in Afghanistan encounters significant challenges, including corruption, a lack of professionalism, ethnic discrimination, government collapse, and military coups. Administrative law is the key instrument of government for ensuring public interests. Establishing effective public administration requires strengthened administrative law (Yusufzada et al., 2019).

The public administration in Afghanistan is still facing numerous challenges, such as the absence of a rule of law, a lack of institutional strategic planning, politicisation, and ethnic discrimination. Government agencies are characterised by a lack of transparency, nepotism and concentration of power, especially in the judicial branch.

From a long time ago, the legal system of Afghanistan was based mostly on religious tradition and regional customs. The Afghan religious scholars who pursued Islamic jurisprudence did so in Afghanistan, India, Tashkand, Bukhara, and Samarkand. With this background, then, the positions of *cadi* (judge) and *mufti* (assistant judge) in the government were obtained. Some of them also taught Islamic studies informally and acted as religious leaders in Afghanistan. The formal framework for legal decisions was the court comprising the *cadis* and *muftis*. Moreover, the leaders of the tribes and sages were informally the sources of decision for many cases. In those cases, the litigants respected their decisions and opinions, which were based on Afghan traditions (Sirat, 1968). The modernisation of Afghanistan's legal system began after adopting the Constitution of 1931. However, this constitution was based on religious customs and was modern in that it recommended that specific laws be enacted within the framework provided. As this constitution was followed, new laws were enacted dealing with the administration of affairs as well as with criminal, civil, and commercial cases.

Nonetheless, the principles of law were taken from religious and national customs, and the Western influences were visible in the new theories of administrative, commercial, and procedural law applied in the making of new regulations. Afghanistan utilised the laws of Turkey, Germany, Switzerland, and France in enacting new laws (Alekseyeva et al., 2017). Hence, in this period, Afghanistan framed new laws while maintaining its religious and national traditional values. A century ago, there was a significant movement of modernisation in which Afghan scholars lacking formal training in Islamic studies restructured the Islamic law into new chapters and articles that would facilitate the finding of specific rules and provide internal consistency.

Before this period, different doctrines and interpretations made it difficult to ascertain the controlling provisions for numerous cases. Another issue, in addition to this, was the fact that the old sources of law were written in classical Arabic, which made the Islamic law texts difficult for Afghans, who are mostly Persian-Dari speakers, to understand. In addition, officials have taken administrative decisions; however, in Afghanistan, administrative laws are unwritten and lack proper mechanisms for judicial oversight, caused by the instability of more than four decades of war (Faiez, 2022).

Moreover, the Taliban's ruling further complicated the legal landscape with the imposition of their interpretation of Shariah and Islamic justice. The post-Taliban reconstruction efforts led by the international community have faced challenges, especially in reconciling foreign models of justice with traditional practices since 2001 (De Lauri, 2012).

Studying legal history is crucial because current laws and regulations are affected by constitutions and governmental systems from the past. Principally, the Afghanistan legal system history started in 1880, and it witnessed many changes during the time. The regulating of Afghanistan's legal system and court system has begun since Abdul Rahman became the Afghanistan's King (Alekseyeva et al., 2017). Before Amir Abdulrahman's regime, judiciary affairs were independent of the government. The Afghan judges were trained in the religious centres (madrassa) and implemented solely Islamic law. It is the parallel with earliest administrative procedure that was an inquest of inquisition in a term in Roman law (Lobingier, 1940). As part of Abdul Rahman's effort to take political power from the provinces and strengthen the central government, he established a formal legal framework that enforced a new secular law, where the regulation is not based on the religious beliefs.

This law was called the law of Royal Edicts, which was an official order by the king himself. During the Abdul Rahman regime, several reforms have been done, and he began a programme to consolidate the central government over the other states (before this reform, Afghanistan was a combination of four states: the State of Hazarajat, the State of Maymana, the State of Kandahar, and the Central Government of Kabul), enacting new laws and establishing the system of government.

The Afghan government was centralised during Abdul Rahman's regime, and until now this system of governance has existed in the country. The next major changes in the government system were brought by Amanullah Khan in 1923 through the constitution of 1923. In fact, in this constitution, the informal court system has been outlawed, and this is the first written constitution of Afghanistan.

### **7.1 Administrative Law in Afghanistan During the Amani Regime**

During Amanullah's rule, Afghanistan began an ambitious process of legalisation and centralisation that included the first writing of Afghanistan's constitution, which was enacted by the "Loya Jirga" (an assembly of regional leaders and tribal chiefs in Afghanistan), which took place in Jalalabad city in 1923. The constitutionally approved authority is the "Loya Jirga (Saikal, 2002). This practice has continued since the constitution of 1923; traditionally, however, most Loya Jirgas since 1923 have been in Kabul.

The constitution of 1923 was influenced by French and Turkish constitutions (Ehler et al., 2015). Howbeit, before Amanullah Khan seemed ready to create a written constitution, he understood that Afghanistan must not be controlled by any external forces, specifically the British.

Hence, winning the war for independence in 1919 was crucial for him to expel the British from Afghanistan; finally, the British were expelled from Afghanistan in 1919. The first article in the first written constitution (constitution of 1923) of Afghanistan strongly acknowledged Afghanistan's independence: "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."

This constitution has not provided for a legislative body and instead vested all enacting law power in the hands of the king; the king could pass any law that he wanted to without approval from anyone else; considerably, it is reducing the power of the religious courts and prohibiting all courts outside the formal state courts.

The centralising of power in the central government made much circumscription for local and religious leadership at that time. It limited their power to resolve disputes and govern, leading local leaders to revolt against the king. Consequently, it led to a constitutional amendment in 1925, in the form of the “Loya Jirga”. Furthermore, the government has been more careful to be in contact with local sentiments before legal reforms. The major focus of the 1925 amendments to the Constitution 1923 concentrated on reintegrating religion.

Moreover, the next constitution of Afghanistan was enacted in 1931, after Habibullah Kalakani stimulated a coup against King Amanullah Khan and ruled shortly until he was killed by Nadir Shah, who was elected as king by Loya Jirga in September 1930. His first order was to enact a new constitution in 1931 (Pasarlay, 2018). The constitution of 1931 was based on the French and Turkish constitutions of that time. According to this constitution, Afghanistan’s first legislative body was created with two houses: the Upper House (Majlis-ai’yan) and the National Assembly (Majlis-e-Shura-e-Mili), which still exist today, and only their names have been changed into Meshrano Jirga and Wolesi Jirga. Furthermore, Nadir Shah felt it was best to avoid the fate of Amanullah Khan and returned the power back to the local leaders.

## **7.2 Administrative Law During Constitutional Monarchy**

After Nadir Shah was assassinated in 1933, his son Zahir Shah was proclaimed king. Despite being the only figurehead from 1933 to 1973, he still practiced considerable power and was helped by a succession of prime ministers during the time. In May 1964, the constitutional committee presented the new constitution to the Loya Jirga members for its approval in Kabul. The constitution of 1964 has given the rights to the Loya Jirga to approve both the constitution and the monarch (Encyclopaedia, 1998).

Based on this constitution, the prime ministers were voted on by parliament delegates, and this was the first period of true representative power in Afghanistan. Law had to be enacted by an elected parliament instead of being put into influence directly by the king. Notably, in this period, the most important reform passed by the National Assembly was a law permitting freedom of the press, which was known as the freedom of communication expression through published sources (Committee to Protect Journalists, 2008). Likewise, the Constitution of 1964 increased individual rights: freedom of thought and expression, protection of private property, formal equality of men and women and all ethnicities before the law, and a right to form political parties; however, this constitution's provisions implementation was weak.

## **7.3 Administrative Law in Afghanistan During Communism**

The Afghan government under communism is another chapter in the Afghanistan legal system. In 1973, Daoud Khan, the first president of Afghanistan, was supported by the elements of the Marxist group in Afghanistan, abolished the monarchy, overthrew King Zahir Shah, and established the first republic government in Afghanistan, ruling with prerogative power and draughting his regime’s constitution in 1977.

In 1978, the Daud Khan republic regime was overthrown by a military coup, and his constitution was never enacted. The Duad Kkan’s constitution never took force because, on April 27th, 1978, a military coup was held against his regime. After the coup, the

“Revolutionary Party of the People’s Democratic of Afghanistan (PPDA)” was formed as a new government in Afghanistan, headed by Nur Muhammed Taraki, and precluded the Soviet invasion of Afghanistan (Agwani, 1980)

At that instant, that government was replaced by a “Soviet-style Politburo”, which was described as the principal policymaking body of a communist state. Notably, the government was ruled by decree of command from the central planning committee rather than legislation. The decrees gave equal rights to women and regulated land reform. This land reform redistributed about half of all rural lands to landless peasants (The Communist Regime in Afghanistan 1978-1989).

The order on women’s rights was convulsive for the region. It regulated the marriageable age for women at sixteen and set an upper limit of Af300 on the money payable to a wife as dowry and in the case of the dissolution of her marriage.

Another decree was that each person over a certain age learns to read within one year, a policy that was extremely criticised in rural areas (Khan, 2014). During this period, it also involved a rewriting of the existing law through the communist politburo. However, most of the criminal codes written under the Daud Khan regime were still used to prosecute crimes.

In December 1979, the Soviet Union, also known as the Union of Soviet Socialist Republics (USSR), invaded Afghanistan. The Soviet Union had coordination with support for Afghan Marxist Babrak Karmal, killed President Amin, and installed Karmal as the new president of Afghanistan. Soon after, Karmal was replaced by Mohammad Najibullah to help calm the growing rebellion against the communist government (*A Historical Timeline of Afghanistan*, 2011).

In January 1987, Najibullah formed the supreme commission for national reconciliation to draft a new constitution. In November 1987, the Loya Jirga passed a new constitution, it created a multiparty government with a legislative for which elections were held in early 1988 (Afghanistan, 1987).

With the rising tide of Mujahideen assaults, on February 15, 1989, the Soviet Union completed its withdrawal from Afghanistan according to the Geneva Accords. President Najibullah remained in power until 1992; however, his followers were a minority in the parliament.

After the Soviet withdrawal, a power void was left in Afghanistan. When the power void occurs, no one is in control; the consequence is a lawless state. Hence, to prevent the power vacuum, an interim government was formed to rule the Islamic State of Afghanistan in 1992 (7.1.2. Past Conflicts (1979-2001)). Howbeit, the Islamic State of Afghanistan was just a state in name, as the interim government could not exercise control over the capital city of Kabul.

One of the delegates from Mujahedeen, Burhanuddin Rabbani, when he seized the executive power, introduced a new constitution in 1992. Starting from all previous constitutions, the constitution of 1992 presented that the state was based on the Qur’anic verse, and the sovereignty of the government belonged to Allah (constitution of 1992). This constitution was thoroughly contrasted with the Constitution of 1964, which illustrated that the sovereignty of the state belonged to the people.

The Constitution of 1992 also did not allow any role for codified law in the adjudication of disputes and the government of society. Conversely, the law was realised exclusively by an extremist interpretation of the Sharia. The state was comprised of three executive bodies: the president, the Jihadi council, and the leadership council (constitution of 1992).

The constitution of 1992 never came into force because of the volume of anarchy and lawlessness existing within the Afghanistan government in 1992. The central government in the capital, had no control over the rest of the country, and various battles were being fought between different tribal groups to obtain control over the government.

As the war continued between tribes in the country, another movement began to win the battleground victories and obtained many towns control outside of the capital. A group of religious students established the “Taliban” in 1994, led by Mohammad Omar. The Taliban caught the support of several refugees and religious students and was reportedly armed by the USA, financed by Saudi Arabia, and trained by Pakistan (Barbara, 2013).

In 1996 the capital had fallen into the hands of the Taliban and controlled most of the Afghanistan territory. Afterwards, the Taliban formed their government in two cities: in Kabul and Kandahar. The Taliban stated that their government aimed to free the country from corruption and claimed that they established a pure society in accordance with Islamic principles. In the beginning, the Taliban government strived to root out corruption and create order. Those efforts were successful; the cycle of battling between mujahedeen was stopped in parts of Afghanistan, and commuting routes were reopened, although the Taliban’s orders were created by depriving people of their basic rights, such as the right to access education, and imposing intense punishment. During their regime, there were no impartial judges, no separation of power, no accessible laws, and no procedural justice. Moreover, under their rule, the previous institutions of the government, the ministries, schools, economic bodies, and other public services were paralysed due to unprofessionalism and lack of political will.

#### **7.4 Afghan Legal System Under the Taliban Rule**

Under the Taliban’s rule, women had no rights (Pennicino, 2022). In 1997 the Taliban ordered a nationwide ban on public education for all women and girls, it resulted women’s literacy rates throughout the country fell significantly to 13 percent in urban zones and 3- 4 percent in the rural areas (Reporter, 2022), which were the lowest literacy rates in the world. Foreign supports to the country were minimized because of the Taliban’s orders aimed to expel foreign non-governmental organizations (NGOs) workers from the country. For instance, on July 10, 2000, the Taliban issued an order that all foreign aid organizations expel their female Afghan employees. Furthermore, during that regime, law was enforced unequally and sporadically. The situation in Afghanistan continued from 1998 to 2001. Those areas that Taliban had control ruled through edicts as mentioned, while other parts of Afghanistan remained outside Taliban’s control and the war continued. Hence, the development of administrative law experienced a backward cycle during the Taliban regime.

On September 11th, 2001, Osama bin Laden and al-Qaeda attacked the USA; the history of Afghanistan changed. It is because of the Taliban connection to al-Qaeda. After the attack on the USA, it responded to the Taliban by invading Afghanistan with the aim of removing the Taliban from power. USA and its allies took control of the country in November 2001 (Laub, 2017).

### **7.5 Administrative Law during the Islamic Republic of Afghanistan**

In December 2001, the United Nations (UN) agreed to monitor a meeting in Bonn, Germany (Bonn Agreement, 2001). Rather, to remove powerful warlords and tribal leaders from the process, all anti-Taliban figures in Afghanistan were included; the final format from that meeting is known as the “Bonn Agreement”, which has become controversial among Afghan society nowadays. Based on this agreement, an interim government was created, and most of the warlords came to power. After the interim government, in 2004 the new constitution was passed by the “Loya Jirga,” and the presidential election was conducted. The constitution of 2004 was a combination of 7 chapters and 172 articles. Based on that constitution, the Afghan government is made up of three bodies: the executive under the president's administration, the legislative combining of the houses (the upper house and the National Assembly), and the judiciary, which is the separation of power (Au, 2015).

## **8. Conclusion**

The development of administrative law can be traced to the modernisation of nations when the people began to limit the prerogative power of governments. The development of this branch of law required the need for the existing parliament, giving the basic rights to citizens to select their representatives and to exercise their rights directly and indirectly in making vital decisions. Numerous factors have contributed to the development of administrative law, including the modernisation of legal systems and the sensationalising of administration to highlight the main responsibilities of rulers.

Nevertheless, the origin of administrative law in the Roman Era is traced back to the formation of administrative procedures. Roman administrative procedures are traced to the Period of Kings between 625 and 510 BC, which was the centralisation of power in that era. Roman law was received by Europe and became the foundation for the development of numerous branches of law in the Middle Ages. The Romans split law into public and private.

Dealing with administrative corruption in Ancient Egypt, denotes the existence of administrative procedures in Egyptian dynasties. As explained earlier, the first ancient Egyptian dynasty recognised administrative corruption around 3100 to 2700 BC. Moreover, in the Middle Ages, the Egyptian judicial system consisted of the court of complaints, the police and market law, which illustrates the separation of tasks in judicial and administrative procedures. Currently, Egyptian administrative law is a combination of civil and common law components and is primarily based on the state council, which sorts the administrative disputes arising from government activities and seeks to ensure the supremacy of the public interest.

The development of administrative law in China is influenced by traditional and modern legal elements. However, China lacked a contemporary administrative framework; it had complex regulations for governing administration affairs and to protect the citizens' rights.

By the late 19th century, the Qing Dynasty had increased subordination to Western imperialism, and semi-colonialism persuaded a sizable portion of Chinese political and scholarly elites that there was a need for China to “save” and strengthen itself by pursuing modernisation. The improvement of the rule of law in China began by amending its constitution in 1999, then several regulations were enacted in 2004 to strengthen the rule of law.

Administrative law in the US was formed in the early days of the republic of 13 colonies. However, social, political, and economic transformation occurred mainly between 1890 and

1910. Administrative law was necessary to regulate the growing administrative power and ensure that it was not abused. The origin of administrative law in the USA is a complicated and multifaceted topic. While most opinions date back to the late 19th century, ICC founding in 1887. The conventional view places its beginnings in the late 19th century, particularly with the establishment of the ICC. Current researchers have challenged this point of view. The US administration is a framework of a constitutional federal republic with the separation of power among the three branches: executive, judicial, and legislative.

The development of administrative law in Afghanistan has faced challenges and turmoil during the different regimes in less than a century, from the first united and independent political unit (the Amani Government) to the constitutional monarchy to communism to the Mujahidin and the first regime of the Taliban and the Islamic Republic. The modernisation of Afghanistan's legal system, comprising the development of administrative law, began with the adoption of the 1931 Constitution, which integrated Western legal theories and granted the basic right to the society such as grating of freedom of media and communication. However, the development of administrative law in Afghanistan encounters significant challenges, including corruption, a lack of professionalism, ethnic discrimination, government collapse, and military coups, it got developed and adopted the modern standard such control of power the government branches in the most of regimes. To come to the point, illustrating the political changes in Afghanistan from its first day of independence until the Islamic Republic regime and the development of administration in several countries provided a chronological view of administrative law development.

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