

## Study the Legal Thoughts of Shah Abdullah Yamgi Badakhshi

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### ABSTRACT

Shah Abdullah, known as Yamgi Badakhshi, is one of the iconic figures in the history, culture and politics of Afghanistan. Despite his legal and political activities, *Yamgi Badakhshi* is mostly known as a literary and cultural figure with less attention paid to his legal and political characterises aspects. The main question is: What does the legal thoughts of *Yamgi Badakhshi* convey? In the present paper, it has been tried to discuss the legal thoughts of *Yamgi Badakhshi*. The data collection in this research has been literature review and analysis has been carried out by adopting the descriptive-analytical method. The present research concluded that *Yamgi Badakhshi* has a deep understanding of the nature of Islam Legal System; and, has compared it with the western legal systems in the areas of constitutional, basic, administrative and international relations laws. In addition, he has addressed the criticisms made by western jurists about the Islamic legal system; and, has done so through logical arguments and providing historical evidences. In conclusion, he has extracted from the depth of the legal system of Islam the legal principals and doctrines in the scope of basic, administrative and international relations laws based with their attributes along with the sources.

**Keywords-** Thoughts, Badakhshi, Law, Legal System, Yamgi.

### I. INTRODUCTION

*Yamgi Badakhshi* is one of the historical icons and a famous figure in Afghanistan. He was an extraordinarily brilliant talent and his significant intelligence has reflected itself in his historical characteristics. *Yamgi Badakhshi* has made great contribution to the literature, history, culture and politics of Afghanistan, and produced innovative academic and literary works.

Studying the scientific and historical characteristics of *Yamgi Badakhshi* is one of the basic needs in the academic and cultural society of Afghanistan; and, by introducing this historical icon, the young generation of Afghanistan will be given the opportunity to become familiar with the range of historical, literary and legal opinions of Yamgi Badakhshi, and this could help them work to have a share in the scientific growth and progress of their country.

The main issue is that *Yamgi Badakhshi* is more recognized as a literary and cultural figure and other

aspects of his academic aspects, including the legal aspect, are unknown; although, he was in fact a graduate of Law and Political Sciences, and was practically working and engaged in the structure of the political and legal system of his time. Besides, the topic of graduation dissertation was on the basic, administrative and international relations laws from the viewpoint of Islam; in which, he expressed his legal theories and doctrines in a very scientific way. The present research has aimed in studying his legal opinions and theories.

No independent scientific paper has been presented on the legal thoughts of *Yamgi Badakhshi* so far. In the papers and other articles published on introducing Yamgi Badakhshi, the main focus has been on the literary, historical and cultural features of this figure. The graduation thesis of *Yamgi Badakhshi* is in fact, the first work one may name on the legal thoughts of *Yamgi Badakhshi*; the dissertation content was organized on discussing the topics of basic, constitutional, administrative and international relations laws in Islam. This thesis has been published as a book by the effort of *Mr. Zahurullah Zahuri* and is available

as e-book. Nevertheless, the legal society of Afghanistan is still unaware of the legal thoughts and opinions of this scientific figure. By studying the legal thoughts of *Yamgi Badakhshi*, the present research provides grounds for students, professors and legal community of Afghanistan with the opportunity to become familiar with the legal theories of *Yamgi Badakhshi*.

## II. BIOGRAPHY AND ACADEMIC SERVICES OF YAMGI BADAKHSHI

A brief biography and a summary of academic services of *Yamgi Badakhshi* is as follows:

### A- *The biography of Yamgi Badakhshi*

*Yamgi Badakhshi* was born in Jurm Town of Badakhshan Province in 1911. He passed his elementary school program in his hometown school to fifth grade, he then moved to Kabul City to continue his conventional education of his time. However, the revolution of *Habibullah Kalkani* forced *Yamgi Badakhshi* to return to his home city. During 1932 and 1933, he worked in various positions including treasurer, customs officer in *Taleqan* and the secretary of the governor office. In 1937, he was invited to Kabul by the then Prime ministry and started working in the ministry. In that time, he took the opportunity of entered the Faculty of law and Political Science of Kabul City, and successfully graduated from that university. Ultimately, after many years of services, he passed away in 1945 after a terminal disease (<http://ww/jamshed-shula.net>)

### B- *Scientific contributions of Yamgi Badakhshi*

As mentioned above, *Yamgi Badakhshi* was one of the scientific and cultural figures and was a significant figure in his time in terms of research as well. He published several articles in the press materials of his time, and showed efforts in publishing scientific work as well. The most important scientific work is described as follows. <http://ww/jamshed-shula.net>

- 1- *Armaghan Badakhshan* (the gift of Badakhshan), this paper introduces the icons of Persian culture and literature, particularly the poets in Badakhshan.
- 2- Clergymen and Jurisprudential (Sharia) figures in Afghanistan (*Olam ava Foqaha in Afghanistan*): This is a short biography of 324 famous figures (scientists, *Faqih* (sharia icons), mystic and religious figures).
- 3- History of *Yaftali*: This is a history of *Yaftali* rulers from their rise to fall.
- 4- Lexicon of Arian Languages of Afghanistan: This is a two-volume book that studies different dialects in Badakhshan and south Hindu Kush region.
- 5- Law in Islam: *Badakhshi* wrote this work as his graduation thesis from Faculty of law in 1941. Of course, the book was printed in 2016, many years after his death titled: Constitutional law, Administrative Law and International Relations. It was edited by the prestigious researcher, Mr. *Zohurullah Zohuri*, by the collaboration of Cultural Section of Afghanistan Embassy in Egypt. It should be noted some of the works

mentioned above are not published yet. (<http://hoomansassan.blogfa.com/post2>)

## III. LEGAL OPINIONS AND THOUGHTS OF YAMGI BADAKHSHI

The legal thoughts of *Yamgi Badakhshi* can be studied through inferential studies from his scientific-legal work in the three scopes of basic, administrative and international relations laws. Of course, the legal thoughts of *Yamgi Badakhshi* are most expressed in response to criticism of western jurists to the legal system of Islam. *Yamgi Badakhshi* has tried to respond to those criticisms by referring to the first hand sources of Islamic laws.

Islamic legal system is one of the significant and fruitful systems among the divine religions and the religious legal systems. The Islamic legal system enjoys systematic legal doctrines in the areas of thoughts, morality, worshipping, the routine life affairs and social issues (Nazdir, 2010:35). *Yamgi Badakhshi* has deeply understood this characteristics of the Islamic legal system. The legal thoughts of *Yamgi Badakhshi* in the topic of law is arranged in following topics:

### A- *The legal thoughts of Yamgi Badakhshi in Constitutional law*

The scholars in law define constitutional law as: The constitutional law is a part of internal public law or the public internal law, to define the form of government, organizations, the political entities, the duties and authorizations of the higher forces as well as the relationship among those entities and forces; and, specifies the general rights of individuals and freedoms of nation, which the government is obligated and required to respect; and, ultimately, it distinguishes the borderline that separates the government's power and the nations' rights." (Zanjani, 2010:712).

One of the topics which are discussed in the legal systems, especially the constitutional laws of countries, is the source of the law. The source of law in western legal systems differs from those of legal system of Islam. By the source of law, it means the features or the origins that developed the legal framework; that is, by legal source, it talks about the authority and power which owns the right of creating the legal regulations and enforcing their execution. In free governments, that authority is public will, which is formed in direct and indirect shapes. The number of source of law in the legal systems of mankind is generally, the law, convention, judiciary procedure and legal doctrines (Katuzian, 2014:119).

The ground of establishing legal sources in the legal system of Islam is different from those systems originated by the will of man. The authority which establishes the legal system of Islam is called *Sharea* (the establisher of sharia). By *Sharea* in the legal system of Islam, it means the orders descended from God and

the Prophet of Islam (Dariz, 2014:2). *Yamgi Badakhshi* first discusses the source of producing the Islamic law, and by relying on the religious teaching, he states the sources of Islamic law as being taken from the Book (Quran), *Sunnat* (tradition), *Ejmae* (Consensus) and the deduction of the *Mujtahed* (the top living authority in Sharia). Based on this argument, except the laws that could be changed through the known *Hadith*; the entirety of the legal laws is considered unchangeable. The western legal systems; on the other hand, originated from legislative assemblies formed by mankind, while the legal system of Islam holds divine source and origin. The procedure in legal system of Islam proceeds by first, referring to Quran to find the law and commands, and if no explicit rule is not found in that source, the tradition of the Prophet, and in the same priority, consensus and deduction are the next source to seek attribution. (Badakhshi 2016:21 and 45).

The relationship between the government and political entities is one of the major topics in the constitutional law is the discussion of relationship between government and political entities (Ghazin, 2009: 31). It means, the constitutional law describes the legal structure of the government, and the relationship between its major and secondary organizations, the governance, the three-force, engagement of individuals in the three-forces, and the individuals law and freedom before the government. (Katuzian, 2016:26)

*Yamgi Badakhshi* believes government, as the major attribute of the constitutional law holds a firm value and status from the viewpoint of the legal system of Islam. The legal system of Islam recognizes family as the source of creating the government, formed from Adam and Eve, who received their training in heaven, and descended to earth; and this continues to this day. However, the western legal system believe the formation of the government was the product of domination, social interaction, historical development.... In this regards, the topics related to the constitutional law of the territory is of particular importance in the legal system of Islam; and, specific laws have been legislated in arranging the political interactions between the government and citizens, obedience and following the doctrine of Source of Verse (the highest authority as per Sharia). (Badakhshi, 2016: 59).

The Islamic system of Islam focuses on a universal government run by the righteous and (morally) competent people. The legal system of Islam opposes the government based on class and dictatorship, and believes absolute governance belongs to no authority other than God. In the legal system of Islam, every single person, by following the command of Prophet of Islam, does hold social and family responsibilities; is free to express his opinion and all these, are registered in the manner the Caliphs ruled. For example, in the history of the First Caliph of Islam it says: It is a must for everyone to obey me as long as I go in the path of riotousness; and if otherwise, there is no mandate to obey me." In addition,

the second caliph of Muslims say: Whoever notifies me of my bias, I will certainly be appreciative to him. (Badakhshi, 2016: 67 and 81)

#### ***B- Legal thoughts of Yamgi Badakhshi in administrate laws***

On defining administrative law, the jurists say: This discipline of law is on about the organization, duties and foundations that constitute executive force, including the organizations, ministries, public offices, and municipalities, and discusses the relationship of those entities. In fact, the topic of administrative law analyses the administrative duties of the executive force; and on this ground, it has a closer relation with the constitutional law. One may say the discussion of administrative law are supplementary to the constitutional law." (Hayati, 2010:80). In another word, administrative law is one of the disciplines of internal public law, the duty of which is to regulate the relationship between the administrative organizations and regulating the relationship between individuals and offices. (Madani, 2011:94)

One of the main duties of administrative law is the discussion on the administrative organization and their relations with people. That is, studying the counter relations in people and investigating their claims (Danesh Pajouh, 2014:25). On the legal thoughts of *Yamgi Badakhshi* on the administrative law by adopting the approach of administrative law of Islam, it must be stated that the administrative law of Islam, unlike the constitutional law which is fixed and originates from Quran, the former has variable and transforming laws and is organized based on the changes and demands dictated by time and place. *Yamgi Badakhshi* believes that the administrative practice and the tradition set by the prophet of Islam, as well as the conducts of the Four Caliphs as the basis of creating legal provisions related to the administrative law of Islam. The administrative changes and transformations have always been present in the administrative legal systems of Islam too; such as discharging Khaled and appointing *Abu Obeydeh Jarrah* to replace the former by the order of *Hazrat Omar* (PBUH).

One of the criticisms to the legal system of Islam by western jurists is the absence of division of forces in the legal system of Islam; as the three-forces are under the authority of the Caliphs of the Muslim. By division of forces, it means distributing the governance authorization among several entities and separated agencies to act independently in order to prevent political dictatorship. Aristotle is the founder of this theory; however, its new version was introduced by the political philosophers of Europe during the 17<sup>th</sup> and 18<sup>th</sup> century; namely John Lock in England and Montesquieu in France. According to this opinion, the three forces (the executive, legislative and judiciary) shall not interfere in each other's task; and/or, no one can be appointed in more than one of those forces. The theory of the division of forces spread first in the U.S.

constitution, then in France and ultimately, it spread in other political systems in the world (Ashuri, 2013:100).

Combination of forces, the absolute separation of the forces and the relative division of or collaboration of forces are among the most important theories related to the division of forces. Among the mentioned theories, what is practically adopted is the theory of relative division or collaboration of the forces. Based on this opinion (relative division), the three forces, while respecting their space and independence, engage in each other's affairs in specific cases in a natural manner and in some cases, they affect each other as well (Shabani, 1994:67).

*Yamgi Badakhshi* in addressing those criticisms answers that in the legal system of Islam, the executive and judiciary laws are absolutely developed in separation from each other. There are several historical evidences in the legal system of Islam in which, the judge or the judiciary system exists as an independent entity and the claims proceeding is carried out practically as a separate issue. In many cases, the leader of the Muslim people was himself a party to the claim and turned to the court in order to be a party in the judiciary hearing. Example of this is the case of *Hazrat Ali's* claim versus a Jewish claimant on the war spoils in which, he summoned his son and male servant to testify in the court; however, the judge did not accept his defence and the case ended in favour of the Jewish claimant, and ultimately, *Hazrat Ali* argued that the property subject of claim belonged to *Beitolmal* (public property). It was in this point that the judge, again ordered for the return of that item. In addition, the claim case between *Hazrat Omar* and *Zeyd bin Sabet* during the caliphhood of *Hazrat Omar*... (Badakhshi, 2016:117).

Of course, the claim of those who argue that in the Law of Islam, the judiciary and executive forces are under the authority of Imam emerges from the doctrine that in Islamic law terms, the Judge's position is a religious position and in the beginning of Islam, there was no other person qualified to take that seat than the Prophet himself. After the demise of the Prophet, this seat was occupied by the first caliph; however, in the second caliphs' term of leadership, as the territory of Islamic system had already expanded, caliph was unable to run all the affairs individually and alone. Thus, the judges were appointed from the capital of caliphhood and by the caliph, and were dispatched to the designated regions. Gradually, during the third and fourth caliphs, the judiciary force took the shape of an independent entity and the executive force was unable to interfere in it. The judges, during the caliphs, delivered the orders and judgments based on the then current laws and the caliphs or his agencies/officers had to enforce those judgements...As a result one might say the judiciary and executive forces started taking distance from each other during the caliphhood of *Hazrat Omar* and became fully separated at the end. The courts in the judiciary system of Islam consisted of the Primary Court (*mahkameh*

*Bedayat*), *Afta (Aftae)* Court and the *Mazalem* Court, each one of them had their own specific jurisdiction and features (Badakhshi, 2016: 117).

On protecting the *Beitolmal* (public property and treasure) and public ownership, Islamic legal system has comprehensive and wholesome laws based on which, every individual is considered liable to maintain them and all residents in the Islamic territory, Muslims, heretics and other Judaic religion followers alike, are recognized deserved to benefit from public proprietorship. Those laws reprimand personal use of public properties. The caliph of the Muslims is not allowed to use *Beitolmal* (public property) in favour of him or his family, as far as *Hazrat Ali* says to his brother that he would not give them any additional share from public property than others, and *Hazrat Omar* ordered his son to return the money he had taken from *Beitolmal*.

On the other hand, supporting needy and poor class of people is among the important responsibilities of the legal system of Islam and it believes economic support to the disabled and those with no means to livelihood is a must. This issue was considered during *Hazrat Omar* too. In addition, regarding ownership of land from the administrative law of Islam, there are two approaches, in the first approach, the criteria are the consent of the owner and in the second approach, the criteria are the public benefit. That is, in the first view, if the property owner is not satisfied, government cannot force him to sell the land. However, in the second view, if the land owner is not satisfied, the government will take over the land by paying a suitable price to the owner, for the purpose of the best interest of public. Both methods are registered in the administrative law of Islam (Badakhshi 2016: 117).

### ***C- The legal thoughts of Yamgi Badakhshi in international relations law***

On defining and difference of the international law with the international relations, the jurist state that the international relations has priority over the international law and as long as those relations are not established, no international law will be formed either. In another word, the international relations are the main and basic ground of international law. It is for this reason the international law is known as originating from international relations. However, when the international relations become firm and disciplined, then the legal criteria will govern that law, and those legal criteria and standards are nothing than the international law. On the definition of international law, one must say, today, there are somehow different or conflicting views in defining the international law. On the other hand, by considering the dominated view and the vote of permanent tribunal of justice, a comprehensive definition can be presented as follows: International law as one of the branches of public law, is the law of the international community; that is, a series of indispensable laws and regulations which emerge from the international relations, and the

regulator of the relationship among the members of an international community. (Bigdeli 2013: 4, and 9).

On the place of the international relations law in the Islamic legal system, the western scientists claim that Islam divides the world into the two classes, namely, the House of War, and the House of Islam, and has considered rights and benefits only for one party. *Yamgi Badakhshi*, in response to this criticism states that from the viewpoint of Quran and legal system of Islam, the world is actually divided into four parts, 1- the part in which, the Islamic governance and system has already dominated over it and it is called *Daroleslam* (house of Islam- the house of peace and balance). 2- The governments that are in alliance with the Islamic governments and they are in some kind of relations, which is called, *Darolmisagh* (house of treaty), 3- governments that are hostile and the Islamic government maintains no treaty with them, though, they can be parties to transactions due to the necessity, needs and the demands of that era and for the best interest of the *Ommat* (the nation of Islam). People of those lands are called Protected (*mostaman*) and their lives and properties are protected from any harassment and loss as long as they have committed no act against the Muslim, and have made no superstitious worshipping acts. 4-The fourth territory is called *Darolharb* (house of war), which is a name given to governments that practically are in hostility and war with the Islamic governments.

Besides these, when the Prophet of Islam was living among people, several treaties were concluded among different groups, those treaties stayed effective during the Caliphs and after that, which are attributes to the peaceful neighbourhood and communication with all people from the viewpoint of Islamic law. Of those treaties, one may recall the First *Treaty of Aqaba*, and the second *Aqaba* concluded between the Prophet of Islam and people of *Yasreb* (former name of Madina) in the 13<sup>th</sup> year of Beasat (prophecy) and other similar subjects... In addition, in the legal system of Islam, there are many counties and even territories which are not under governance of any particular government; nonetheless, they are considered as having independent legal entity from the viewpoint of the international law. The example is that Prophet of Islam recognized the people of *Qoraysh* and residents of Mecca and concluded *Hadiba* Peace between them (Tareq, 2021: 94).

In the same manner, in the international law of Islam, the political representatives enjoyed specific importance and the prophet of Islam, on the onset of development of Islam, established relationship with the Arab tribes, and other nations either by meeting in person, or through sending political delegates; and announced his religions and political programs. The same procedure was common during the caliphs of Islam, examples are sending letters and dispatching

ambassadors to the Cesar of Rome, Khosrow of Fars, *Najashi* in Hebesha (Ethiopia today), etc. (Badakhshi, 2016: 177).

Ultimately, it should be said there are many detailed subjects about the legal thoughts of Yamgi in the topic of constitutional, administrative and international laws from the viewpoint of Islam, extracted from his graduation thesis; nonetheless, in the present research, just a few are discussed in an abstract form to provide the samples of his ideas. To become more familiar with the legal thoughts of Yamgi Badakhshi, the reader is invited to refer to Badakhshan's thesis titled "Constitutional, Administrative and International Laws in Islam."

#### IV. CONCLUSION

By contemplating the subjects discussed in this research titled "The Legal Thoughts of *Shah Abdullah Yamgi Badakhshi*", it can be noticed that: In addition to being an outstanding character and a cultural and literary icon, *Yamgi Badakhshi* also shows deep understanding of the legal issues as well. His knowledge on legal issues can be deduced from the fact that he learned the theoretical subjects and theories of law through presence in the existing political organizations; and, from speciality term too, he was a graduate of law and political science.

*Yamgi Badakhshi* has left to us many research works in the area of culture and literature as his intellectual and durable heritage; and in the legal topics; too, he has written his valuable work titled: The Constitutional, Administrative and International Relations law in Islam." Studying the legal thoughts of Yamgi indicates he was well aware of the nature of western legal system, and the Islamic legal system; and enjoyed deep understanding and legal analysis power. The mentioned legal thought is an evidence of making comparisons between the mentioned legal systems in the scope of constitutional, administrative and international relations laws.

*Yamgi Badakhshi* discussed and made arguments on the criticisms of western jurists against the legal system of Islam, from the legal viewpoint. The legal thoughts of Yamgi focus on the core of constitutional, administrative and international relations laws, and the genuine sources of legal system of Islam, the historical evidences of the legal activities of Prophet of Islam (PBUH) and his caliphs.

Although many years have passed since the legal work was written and the reflection of his legal thought, to this date, those legal thoughts still have saved their dynamism and boldness, and it is recommended as a source of knowledge and study for students of law, and other fans of research and studies.

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