



The Disconnect Between Law and Reality: Women's Rights in Afghanistan

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Abstract

The article identifies some of the barriers to the achievement of women's rights in Afghanistan, specifically pointing out the discrepancy between the legal provisions and the problems that Afghan women face in reality. The paper states that, although there exist constitutional and international commitments for achieving gender equality, weak implementation and socio-cultural barriers make any progress difficult. The legal rights of women in Afghanistan will be assessed in terms of a qualitative methodology for analyzing the legal framework, implementation problems, and cultural barriers to the exercise of women's rights. Besides identifying some of the discrepancies between laws and traditional practices in Afghanistan, the paper will also identify other factors that create an environment hostile to women's rights, including corruption, among others. This report analyzes the problems surrounding the attainment of women's rights in Afghanistan from 2021. These results indicate that gender inequality in Afghanistan has been affected by a combination of factors related to laws, policies, and culture, leading to an inability for these laws to reach those in need. In order to counter such problems, a holistic approach would be necessary, going beyond changes in laws to building up the capacity of law enforcement agencies, increasing legal consciousness, and facilitating cultural change. Without this, legal protection itself may not be enough for ensuring women's rights in Afghanistan.

Introduction



The issue of rights of women in Afghanistan has always been determined by the interaction of many factors including political transformation, legal processes, and culture. Within the last decades, women in Afghanistan went through different periods of growth and regression, which were mainly associated with various political changes and the presence of international actors in the region. While earlier, the constitution and international laws focused on the idea of gender equality and women empowerment, recently things changed drastically.

Formally speaking, there have been instances where laws were passed that aimed to protect the rights of Afghan women in terms of education, participation in the public arena, and protection against violence. The mere fact that such laws exist does not mean they were enforced. There is a significant difference between theoretical law and actual practice, indicating serious structural problems in the country, which include weak institutions, lack of accountability, and poor enforcement of laws.

Cultural opposition is also an important consideration when looking at the constraints on the rights of women. Often, traditional patriarchal beliefs tend to undermine any legal framework that exists. In some cases, cultural values play a bigger role in influencing people's decisions than the laws of the state.

This Article aims at examining the interaction between law and reality regarding the rights of women in Afghanistan. The study concentrates on three major aspects; legal impediments, absence of law enforcement, and the cultural influence. In doing so, this paper underscores the rationale behind the inefficacy of laws in ensuring gender equality in the country. This research paper therefore reveals that any strategy for improving women's rights in Afghanistan should be holistic in nature.

Literature Review

Afghanistan has endured many years of ideological rivalry among its people, civil war, and political instability in defining women's rights. Even though the Constitution of Afghanistan, adopted in 2004, provides for gender equality, the law has never effectively implemented gender equality in practice, particularly in rural areas of the country where customarily imposed local laws continue to dominate. All aspects of Afghan women's lives (including social, political, and legal) limit their ability to participate fully in society. This is due to Afghanistan's



weak rule of law and governance; the persistent influence of traditional customs and cultural norms; and the power exerted by political elites and warlords in the country. Although legal instruments exist to support women's rights in Afghanistan, the lack of enforcement of provisions results in a climate of impunity. Several activist groups, including the Revolutionary Association of Women of Afghanistan (RAWA), have historically played a key role in promoting women's rights through advocacy. However, RAWA has drawn criticism from some for its secular and militant positions because they do not align closely with women's true lived experience in rural areas of Afghanistan. The criticism reflects an urgent need for the advocacy community to strike a balance between providing support from outside of Afghanistan and developing an advocacy strategy grounded in the local culture of women (Brodsky, 2004).

Barriers to girls accessing higher education in Afghanistan include a lack of secondary school attendance, poor infrastructure, economic hardship, and safety concerns. Societal norms concerning the value of education impede women's ability to participate in higher education. Solutions to these barriers include setting enrollment quotas, providing financial assistance and incorporating human rights education as a means of empowerment for women. Security issues and regional disparities are major obstacles to advancing girls' educational opportunities particularly outside of urban areas. Addressing these barriers is imperative to empowering women and ultimately improving the economy and society as a whole (Burrige, Payne & Rahmani, 2016).

The advancement of gender equity in Afghanistan relies heavily on reconstruction after the war. The shifting environment from insecurity to stability, as well as the transition from illegitimate to legitimate government, has created an environment conducive to making these kinds of changes. There has been legal recognition of women's rights; however, due to issues such as poverty and lack of security, there are still substantial barriers to women's access to their rights. For example, women have historically experienced resistance from conservative groups when trying to make advances in women's rights. Furthermore, the ongoing conflict between Islamic law, customary practices, and the international human rights treaties has created difficulties for women in Afghanistan to achieve their rights. National reconciliation and political stability



are necessary pre-conditions needed in order for these kinds of reforms to occur.

Without these conditions, women's rights will continue to be subject to exploitation and abuse politically (Kandiyohi, 2005).

The historical behavior of the Taliban towards women remains problematic, especially when the U.S. accepted very few Afghan refugees in the 1990s (particularly women). The Taliban's assurances of liberalizing reforms (including opening schools and allowing a limited amount of employment) have often been unverifiable and are often viewed as attempts to lessen their isolation from the rest of the world. The way that they justify their restrictions as "protection" is not widely accepted at this time. Afghan females will require a long-term support network after an extended amount of trauma; therefore, a coordinated program will be critical to ensure that the rights of females are protected and that the recoument of females can take place without interruption over an extended period of time (Blecic, 2000).

While improvements have been made, many barriers remain in place that prevent Afghan women from being fully empowered. Patriarchal values and violence against women continue to be a part of everyday life. Efforts to reform legislation must comply with internationally recognized human rights standards such as criminalizing rape and creating awareness of women's rights and legal protections yet frequently take a backseat to the political priorities of the day. International development assistance has helped improve health and education but the ongoing threat of insurgency continues to be an obstacle for many people - especially in the south where schools are still at risk from threats to their safety. Power structures overwhelmingly favor men - the result of which is the entrenchment of systemic oppression through criminal acts such as drug trafficking and human trafficking. Many men and women in Afghanistan are still risking their lives to achieve change; thus, there is an urgent need for continued advocacy to advance systemic reform (Alvi, 2011).

Four core themes emerge regarding Afghan women's quest for higher education. First, many obstacles exist that impede women from pursuing higher educational opportunities, including economic difficulties, lack of family support, and cultural restrictions. These barriers may be mitigated through various forms of family support, advocacy for education and religion, and through each woman's



own determination. Second, obtaining higher education enables women to contribute to their nation's rebuilding and improve the lives of their families and the communities in which they live. Third, successful women possess many of the same characteristics; for example: intrinsic motivation and opportunity for extrinsic support. Finally, as more and more women receive an education, they can become catalysts for change, and can challenge the structures of equality, and in doing so inspire other women (Mashriqi, 2016).

The literature currently available on women's education in Afghanistan is very limited. There are many legal, socio-economic, and security barriers that impede women's education; however, there are also many other factors affecting these barriers (e.g. ethnicity, geography, and socioeconomic class) that have not been studied well. The relationship between the way that international aid affects social norms and societal attitudes about gender roles has also not been studied extensively. The roles of women in post-conflict reconstruction, particularly through community-based initiatives and informal support systems, continue to go largely unrecognized and underrepresented. Together, all of these gaps demonstrate the need for much more extensive, contextually appropriate, and intersectionality-focused research into women's education, rights, and empowerment in Afghanistan.

Disconnection Between Law and Implementation

The legal framework governing women's rights after the withdrawal of the U.S. forces seems more like symbolism than actuality. Sharia laws enforced by the Taliban government go against previous statutory and international laws, leading to a situation where women's rights have some form of legislative provisions without any way of enforcing them. The root cause of this anomaly lies within the country's past legal framework, which involved rural societies adopting practices such as jirga and shuras to govern them, thus upholding the patriarchal structure. Whereas urban areas provided some level of protection to women with the previous government sponsored by the U.S., there is no room left now.

The dissolution of such monitoring agencies results in further alienation of the law from its enforcement, hence leaving behind nothing else but a situation where there is no neutral party that can force the officials to adhere to



the law and/or monitor the violations of the law. Such a system creates a situation where women view the law as restricting, hence dissuading them from seeking legal resolutions (UNAMA, 2023; Human Rights Watch, 2022).

Ineffectiveness of Enforcement Mechanisms

Nevertheless, the efforts made to enforce the legal protection for women's rights since the withdrawal of the USA from Afghanistan have turned out to be quite unsuccessful. There are certain problems associated with the enforcement of the law in this area by governmental institutions responsible for women's affairs, specialized police units dealing with domestic violence, and gender units within the Attorney General's office (UNAMA, 2021). After coming into power, the Taliban have either dissolved or restructured most of the institutions responsible for ensuring the security of women. In the Taliban government, the process of justice is vague and centralized; the local authority decides on issues regarding women according to their interpretation of the Islamic Law, and in such situations, tribal solidarity and family ties supersede accountability (Ahmad, 2023).

Cultural Resistance to Legal Protections

Although laws like the Elimination of Violence Against Women (EVAW) Act have been enforced in the U.S.-backed government period, the cultural perspective of viewing gender equality as something that was alien to Afghani culture continues to act as a major hindrance to enforcing the rights of Afghan women (Kakar, 2020). The modern laws protecting the rights of Afghan women in the rural and tribal regions of Afghanistan do not gel well with the traditional family values and thus create problems of selective enforcement and contempt towards legal regulations. Further, by promoting the orthodox Islamic laws that were in agreement with the patriarchal values of tribal customs, the Taliban have aggravated the problem. Reconciliation takes preference over justice for victims, and thus the decisions of the tribal councils and religious leaders regarding the rights of women carry more weight than that of the courts (Dupree, 2014). Forced marriages, domestic violence, and lack of education are some of the private family issues

Political Instability and Its Impact on Rights Protection

The political turbulence in Afghanistan has greatly impacted the



protection of the rights of Afghan women. The political situation created by the departure of the elected government following the US withdrawal in 2021 and the reinstatement of Taliban rule has created a legal vacuum. Survivors have no clear legal channels for remedy because of the ambiguity surrounding regulations such as the Elimination of Violence Against Women (EVAW) Law (Human Rights Watch, 2022). Dismissals, fledglings, or operations under Taliban constraints that give precedence to Sharia-based adjudication over statute law have resulted from this breakdown. Women's rights institutions have suffered in Afghanistan as a result of political unrest; several government agencies have been abolished or reorganized under Taliban control (Amnesty International, 2022). Civil society organizations are now the lone remaining defenders of women's rights in certain regions after the institutional infrastructure that formerly provided a gateway for women seeking justice has been removed. As a result, women's rights have not received enough financial or logistical assistance.

Gaps in International Support for Women's Rights

The international community's efforts in defending the rights of women in Afghanistan have drastically changed since the United States' withdrawal from Afghanistan in August 2021. Traditionally, women in the country had access to legal assistance programs, grassroots initiatives aimed at empowering them, and educational activities targeted at women thanks to the involvement of foreign countries, international bodies, and nongovernmental organizations (Human Rights Watch, 2023). Yet due to various restrictions, many have either ceased their operations altogether or scaled back on them (Human Rights Watch, 2023). The absence of consistent support for women's rights in Afghanistan is a serious problem since international organizations must comply with stringent Taliban regulations that restrict women's employment and public participation. Programs, especially in rural regions, have been forced to cease services or operate at reduced capacity as a result (Amnesty International, 2023). For Afghan women, practical aid that may immediately enhance their safety, mobility, and access to justice is frequently substituted with symbolic support.

The international community has responded to women's rights in Taliban-controlled Afghanistan in a variety of ways. While some donor governments have



chosen to direct cash toward humanitarian help that is not gender-specific, others have chosen to impose targeted sanctions and isolate themselves diplomatically. Because the Taliban leadership has demonstrated a readiness to suffer political isolation rather than make significant compromises on women's rights, this uneven approach has reduced influence (United Nations, 2023). Gains gained during two decades of worldwide presence run the risk of being irrevocably undone in the absence of a concerted approach. Afghan women's rights advocates feel abandoned by the international community as a result of the lack of international assistance in their country, which lowers their morale and gives authorities more confidence. The chances of regaining or defending women's rights in Afghanistan are weakened by this lack of support. To address these concerns, a fresh international commitment is required, encompassing targeted funding for women's advocacy groups, diplomatic engagement, and humanitarian help (Human Rights Watch, 2023; United Nations, 2023).

Institutional Weaknesses and Enforcement Challenges

Weak institutions and the breakdown of legal systems have made it difficult for women's rights to be enforced in Afghanistan after the United States withdrew. Ministries such as the Afghanistan Independent Human Rights Commission and the Ministry of Women's Affairs offered legal protection and gender advocacy under the U.S.-backed Afghan government. These organizations, however, were disbanded or reorganized upon the Taliban's return in August 2021, leaving a gap in enforcement and permitting abuses against women to remain unrecorded and unpunished (Human Rights Watch, 2022).

Corruption and Lack of Accountability

The problem of women's access to justice has been made worse by corruption in Afghanistan's legal and law enforcement institutions, especially when it comes to matters affecting women's rights. With victims frequently accepting bribes to file complaints and the conclusion frequently being decided by political or financial influence rather than legal merit, the breakdown of external checks has created more chances for rent-seeking activity. As a result, the nation is not as accountable as it could be (Transparency International, 2021). Due to the prevalence of such practices, where many cases of violence and property-related crimes against women were resolved through informal hearings



by male community elders, the non-transparency of the judicial process has made the problem of impunity even more severe. The legal framework often puts the honor of the family ahead of the rights of individual women through conservative application of Islamic and customary law (Human Rights Watch, 2022). Apart from preventing evidence-based policymaking, this approach ensures that no official records are maintained, thereby keeping the offenders free from accountability.

Judicial Bias and Selective Law Enforcement

Due to selective law enforcement and judicial prejudice, women's rights in post-US Afghanistan are severely challenged. Corruption, political meddling, and inconsistent enforcement of legislation intended to safeguard women have all plagued the legal system. These problems have gotten worse in the post-2021 environment since Sharia law interpretations have a significant impact on the court system (Barfield, 2012). As a result, legal safeguards have been rolled down and replaced by decisions that give formal legal legislation less weight than conventional gender norms. Overt discrimination against female complainants and procedural obstacles that deter women from seeking justice are examples of judicial bias. The judges are said to punish women for committing moral crimes by leaving the house without permission, and they refuse to hear women's testimonies if they don't have male guardians (Human Rights Watch, 2022). It denies women the right to a fair trial and reinforces social expectations in favor of patriarchal dominance. Law enforcement selectively applies laws based on social status, political influence, or tribal identity. Consequently, the perpetrators of sexual violence from influential backgrounds receive immunity from the rule of law, while marginalized women receive swift retribution. Courts are viewed by women as institutions meant to punish them, which compromises their credibility (Amnesty International, 2023).

It is necessary to transform the composition and education of the judiciary to deal with judicial discrimination against women. They require training on gender equality and human rights, along with developing supervisory processes to guarantee impartial trials. Judicial reform is crucial since the judiciary continues to perpetuate systemic discrimination without intervention.



Political and Security Factors Affecting Women's Rights Enforcement

The politics and security environment in Afghanistan have an influence on the implementation of women's rights in the country. The changes in judicial procedures and enforcement mechanisms are a direct consequence of the Taliban's assumption of control over the government apparatus (Rashid, 2022). The governance structures in the country have been transformed due to the centralization of the political landscape under the Taliban, replacing accountability institutions concerned with gender-based crimes with institutions prioritizing ideological compliance over internationally recognized human rights principles. The security situation in Afghanistan has been exacerbated by political unrest in the country, as tribal disputes, insurgency, and local violence have continued despite the rise of the Taliban. Women find it challenging to report crimes and seek justice when living in an insecure environment. In areas controlled by Taliban security forces, victims are discouraged from making complaints about violations out of fear of retaliation, especially if the perpetrators are affiliated with the ruling establishment (Giustozzi, 2023).

While not protecting women from violence and promoting their legal rights, the Taliban's system of governance has incorporated the use of force along with ideological control, with its security apparatus ensuring compliance with dress codes, restricted movement, and the prohibition of secondary schooling. Such militarized enforcement measures damage the credibility of the state, positioning it as a coercive actor, thus shifting its role from a guarantor of security to a controller of social norms (Amnesty International, 2023). As a result of the Taliban's lack of diplomatic legitimacy, Afghanistan has become isolated from global efforts toward gender equality. Consequently, acquiring international support in terms of law and finance has become more challenging. In such conditions, domestic political priorities can come before any external pressure regarding women's rights issues. Enforcement of women's rights cannot be achieved without political transformation and a favorable security environment.

I. Centralization of Power and Its Impact on Women's Legal Protections

Extreme concentration of power has been a key component of the Taliban's governance style since August 2021, with the Supreme Leader and a select group



of senior clerics holding the majority of the decision-making authority. The fragmented, flawed legal and administrative frameworks that permitted a progressive interpretation of women's rights have been demolished as a result (Noori, 2022).

II. Dismantling of Formal Legal Safeguards for Women

The 2004 Constitution and the 2009 Law on the Elimination of Violence Against Women (EVAW Law) provided Afghanistan with a limited set of statutory safeguards for women before the U.S. exit in August 2021. But enforcement was patchy and frequently weakened by corruption. Women previously acknowledged statutory rights under Afghan and international law were lost when this legal framework was either abrogated or rendered non-operational when the Taliban took power (UNAMA, 2019).

III. Restrictive Edicts and Gender-Specific Legal Discrimination

Since August 2021, the Taliban have restricted the role of women in all spheres of society by imposing gender-based decrees. Such decrees, which are made either by the Ministry for the Promotion of Virtue and Prevention of Vice or provincial governors, bar females from attending school and universities, restrict female participation in most sectors, mandate male chaperoning for travel outside a short radius, and ban women from participating in politics (Amnesty International, 2022). The process of implementing such decrees is immediate, with no forewarning and input from the general public, as they cannot be reviewed in court or debated in parliament. Specifically targeting women and perpetuating gender discrimination, the legal system of the Taliban has shifted from codified laws to religious decrees based on the Taliban's strict adherence to Sharia law.

IV. Enforcement Mechanisms and Social Compliance

After the U.S. withdrawal Afghanistan uses a combination of official decrees and unofficial social control to impose gender-restrictive laws, fostering an environment of fear. The main enforcement agency, the Ministry for the Promotion of Virtue and Prevention of Vice, uses religious police to keep an eye on women's attire, whereabouts, and conduct in public. Local tribal elders and religious authorities are in charge of enforcing the Taliban's commands in rural regions; their interpretations may be more stringent than those of the central



V. **Normalization of Restrictive Norms in Public Policy**

Restrictive measures targeting women have been commonplace in public government after the Taliban regained control in August 2021. Originally temporary directives such as dress codes, restrictions on employment, and prohibitions on education have evolved into regular policies in ministries, provincial offices, and local councils, demonstrating a conscious effort to establish gender segregation and exclusion as a long-term aspect of Afghanistan's political and cultural landscape (UNAMA, 2023).

Institutionalization of Gender-Based Exclusion in Education

Taliban justified the ban on girls attending schools as an emergency response to the withdrawal of US troops. In terms of administration, the policy has evolved to become an organized system with the aid of administrative directives that have been issued, and it mandates a gender-segregated timetable, which is not always feasible due to insufficient resources, and forbids females from joining classes beyond a certain level (UNESCO, 2023).

At both the national and local levels, gender roles in education are institutionalized. Provincial education directors have restricted the participation of female teachers in school administration positions and removed them from mixed-gender classrooms in remote regions. Because many families forbid male teachers, this creates a domino effect that makes it more difficult to maintain girls' access to basic education (Human Rights Watch, 2023).

Gender equity sections have been replaced by supervisory committees focused on religion and ideology in the Taliban's reorganized Ministry of Education. This change restricts women's involvement in the education sector by giving priority to religious interpretations of Sharia law. The governance climate created by this bureaucratic reorientation not only restricts female education but also makes it incompatible with institutional aims (Amnesty International, 2022).

Generational impediments to women's engagement in Afghanistan's public life, governance, and workforce have been established by the Taliban's education program. The nation runs the risk of becoming a gender-segregated society in the absence of both internal change and foreign action, which would permanently limit women's social mobility and result in a loss of human capital.



Even if political circumstances improve, it will need consistent work to restore the infrastructure and the public's support of women's education in order to reverse these impacts.

Legal Codification of Women's Exclusion from Public Employment

Afghanistan's governance structure has undergone major change since the U.S. exit, and the legalization of women's exclusion from public work is one example. In 2021, this was an unofficial practice that has since developed into a statutory framework that prohibits women from holding most government jobs, except for some posts in healthcare and primary education, where their presence is deemed "religiously permissible" (UNAMA, 2023).

By requiring resignation letters, reassigning women to non-functional tasks, and suspending their salaries for noncompliance, provincial and district levels are furthering gender-specific workplace exclusion. It is logistically difficult for women to work in certain ministries because they must sign affidavits promising not to access offices without male guardians (Human Rights Watch, 2023).

The clear statement that "male applicants only" or that female applicants must have male guardianship permission serve as more evidence of the exclusion of women from government hiring practices. In addition to eradicating present female involvement, this inhibits the next generation of educated women from pursuing careers in public service. Women's representation in decision-making is likewise eliminated with the closure of the Ministry of Women's Affairs (Amnesty International, 2022).

Half of Afghanistan's population is barred from public service by the country's legal codification, which results in a loss of operational variety, institutional memory, and competence. Because female monitoring reduces responsibility, this exclusion also raises the potential of corruption. Even in cases of political transition, policy reversal is challenging due to the inflexible embedding of discriminatory practices, which normalize gender exclusion as a "standard" governance paradigm.

Restrictive Legislative Interpretations Reinforcing Gender Segregation

Through legislative interpretation, Afghanistan has integrated gender



segregation into its socio-political structure, like the United States. While some policies are legal decrees, others rationalize gender-based limitations through religious interpretations. As a result, segregation is now a state-sanctioned legal basis in the governance system, rather than merely a societal norm (UNAMA, 2023).

Laws about labor and education are being construed to require men and women to be physically separated in public areas, workplaces, and educational institutions. This goes beyond the physical infrastructure, controlling forms of interaction, transportation, and timetables. Certain provinces have laws that exclude women from working in workplaces where males are employed, thereby excluding them from various economic areas without outwardly banning them (Human Rights Watch, 2023).

In public administration and education, gender segregation is widely interpreted in restrictive ways. Gender segregation is further normalized in professional settings by laws that require male guardians to make formal requests for female candidates. Due to a lack of female teachers, same-gender instruction is required under teacher qualification standards in the field of education, which restricts women's access to further degrees (Amnesty International, 2022).

Restoring women's rights in Afghanistan is severely hampered by the country's continued legal interpretation of gender segregation. Since these policies are ingrained in the current legal system, it is challenging to repeal them. Additionally, they systematically undermine women's involvement in public life while enabling rulers to assert legitimacy. These restricted interpretations have the potential to solidify into established precedents and have a long-term impact on the nation's governing system if they are not challenged.

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