



Asian Law Students' Association  
National Chapter Indonesia

# LOCAL CHAPTER

LEGAL WRITINGS





## **The Predestination of Afghan Women's Rights Under Taliban Rule**

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### **Background**

The Taliban has taken over Afghanistan as their government falls, leaving millions in threatened situations. In the history of Afghanistan, the Taliban has always had heavy influence in the Afghan military, especially so during its peak from the 1970s to the 1980s, to the point where the Taliban almost controlled the whole region of Afghanistan. Though they lost their stranglehold of most the country in 2001, still in the last two decades, these insurrectionists ruled over many sectors in Afghanistan. The funding for this movement derives from both legal and illegal activities such as, drug trafficking, criminal activities, exertions, forced taxes and foreign aid.

Over the last few decades, Afghanistan has been known as a country with endless wars. This issue recently became a glaring concern across the world when the Taliban fighters began retaking the nation, taking advantage of the instability left after the United States and the West began their military withdrawal. If the Taliban regains full control, one of the issues that arises is the rights of women in Afghanistan, Afghan women find themselves in the most fragile position of looking for the help from international community. Despite claiming that they seeked peaceful relations and would respect women's right, Afghans remain skeptical. The violence and oppression that Afghan women endured during the period when the Taliban held control in the 1990s has the rest of the world concerned of what might happen to women under their rule today.

International human rights treaties prohibit discrimination on the basis of gender and also require States to ensure the protection and realization of women's rights in all areas – from property ownership and freedom from violence to equal

access to education and participation in government <sup>1</sup>. Afghanistan is a party to the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. Both of these covenants provide that the enumerated rights shall be granted equally without regard to sex, religion, or race. Although the Taliban's spokesman has stated that the rights of women in Afghanistan will be respected within the framework of Islamic law, this does not eliminate the fact that in Taliban-controlled areas, women's universities have been closed, they are denying girls access to education, and women are sold as sex slaves <sup>2</sup>. This actively demonstrate how Afghan women's life are under Taliban rule.

### **Formulation of The Issue**

1. What are the rules that are used in Afghanistan to enforce the justice to uphold liberties of afghan women's rights under Taliban rule?
2. What are the contributions of the global society or organizations to uphold the protection of Afghan women's right under Taliban rule?

### **Analysis**

#### **Rules that are used in Afghanistan to enforce the justice to uphold liberties of Afghan women's right under Taliban rule**

The distress in the country of Afghanistan continues to be an international problem, it has overwhelmed the country for the last few decades. Discrimination and infliction are known to be the longest humanitarian crises in Afghanistan. The reason for this unfairness is the weakness of this country in enforcing its own laws. Afghanistan is known to use a legal system derived from three parts, Islamic, statutory, and customary rules, but the supremacy law of the land now is the Taliban

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<sup>1</sup> International Justice Resource Center, 'Women's Human Rights' (ijrcenter. Org 2020) <https://ijrcenter.org/thematic-research-guides/womens-human-rights/> , accessed August 27, 2021

<sup>2</sup> European Parliament, 'Afghanistan Crisis: Safety of Afghan women and girls has to be a fundamental EU priority' (europarl.europa.eu 2021) <https://www.europarl.europa.eu/news/en/press-room/20210816IPR10102/afghanistan-safety-of-afghan-women-and-girls-must-be-fundamental-eu-priority> , accessed August 27, 2021



Sharia Law. According to Taliban's senior commander, Waheedullah Hashmi, about the new government system, an Islamic government should be guided by Islamic law. "Sharia" translates to "the way" in Arabic and refers to a wide-ranging body of moral and ethical principles drawn from the Quran and from the sayings and practices of the Prophet Muhammad<sup>3</sup>.

So far, the implementation of this legal system has not proven to be effective as due to weak law enforcements, many are still affected by cases of injustice – woman in particular. Afghan women are known to be the "unfortunate society" in the world. Not only do they have limited access to education, healthcare, but they have also been victims of rape, murder, human trafficking and many other forms of violence from both the government or for some, from family members. The conflict that is happening in Afghanistan today, could be considered as part of the armed conflict which is regulated in the International Humanitarian Law. Moreover, since Afghanistan also has ratified several treaties on the implementation of women's rights, the nation should therefore ensure the protection of these rights. However, due to contradictions between government laws, religious rules, and local conflicts, protecting women's rights has not been an urgency for the government.

The traditional decentralized political system provided a relatively safe place for most of us in any stents in habitats. Given the reality of numerous warlords and ubiquity of weapons, there was a significant degree of order and tranquility. The social control must have been one of the retributive elements in their tribal.

The Jirga system is a body which focuses on conflict resolution in many cases of disputes in the Afghan society in areas without a formal and legal justice system. Moreover, the country also implements the Islamic law known as the Syariah. This law was introduced by the Taliban leader who believed that the primary function of law was to promote Islamic ideas, values and to provide protection for the people. The foundations of this Islamic Law are Quran and

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<sup>3</sup>Arwa Ibrahim, 'Explainer: The Taliban and Islamic law in Afghanistan' (aljazeera.com 2021) <https://www.aljazeera.com/news/2021/8/23/hold-the-taliban-and-sharia-law-in-afghanistan>, accessed August 28, 2021



Hadith. These foundations however, have been interpreted in many ways, allowing their integrity to be compromised, thus is unsuitable to be implemented in today's society, particularly in issues regarding women's rights.

It is believed that the national law of the country role should be maintained as the main law enforcement to manage war crimes and violations of the humanitarian law that are happening today. By issuing a national law that regulates violations of the humanitarian law and establishing witnesses to these violations, sanctions on perpetrators of war crimes or humanitarian law can be imposed. Written on the constitution of the Islamic Republic of Afghanistan, the regulation that the country uses to enforce the justice to the liberties of Afghan women's rights under Taliban rule on the chapter one, article six says that “ the state shall be obligated to create a prosperous and progressive society based on social, justice, preservation of human dignity, protection of human rights, realization of democracy, attainment of national unity as well as equality between all peoples and tribes and balance development of all areas of the country”. This chapter is supported by chapter two which contains articles regarding fundamental rights and duties of citizens.

### **Contributions of The Global Society or Organization to Uphold the Protection of Afghan Women's Right Under Taliban Rule**

From the last few decades, the abuse of Afghan women right has always been one of the most concerning issues in the global society or organizations. Recently, this concern has been rapidly growing especially since the Taliban took over the country. Eighty percent of nearly 250,000 people in Afghanistan have been forced to flee their homes since the end of May, many of which are women and children, according to Shabia Mantoo, a spokesperson for the U.N. refugee agency<sup>4</sup>. Indeed, the way Taliban are treating Afghan women in their transition of power, will greatly affect global society's efforts

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<sup>4</sup> Josie Fischels, 'What Women's Advocacy Groups Worldwide Are Doing For Women In Afghanistan' (npr.org 2021) <https://www.npr.org/2021/08/16/1027929275/what-womens-advocacy-groups-worldwide-are-doing-for-women-in-afghanistan>, accessed August 30, 2021



in upholding women's rights. International human rights treaties prohibit discrimination based on gender and also require States to ensure the protection and realization of women's rights in all areas – from property ownership and freedom from violence to equal access to education and participation in government. The ICCPR part II shows that the human right should be recognized without any distinction of any kind, including gender or sex. Violators of this article must go through a legal process.

Currently, Afghan women are receiving many supports from the international community, one of which being from the Women for Women International. It is a non-governmental organization which provides women affected by the war, civil strife and other conflicts with the tools and resources to achieve stability and self-sufficiency, ensuring long-term viability of civil society. Women for Women International (WFWI) works with socially excluded woman in eight countries where war and conflict have greatly affected their lives and communities. Their mission is to enable these women to independently provide for their families, provide access to adequate healthcare to improve their well-being, and most importantly, able to educate these women regarding their rights in society. The end goal is to allow these women to utilizing their skills, knowledge, and resources to create better life for their family, community, and themselves.

With the following program by WFWI that has been establish since 2002, the Strong Women: Strong Nations program has reach more than 127,000. The impact of this program had helped women in five provinces in Afghanistan to be more equitable to gender attitudes, meaning less discrimination or a fairness and justice regarding to both man and especially towards women's needs. To also learned to increase food security for their families that refers to the ability to serve more nutritious and sufficient safe food to be able to reach the goal of "Zero hunger". Lastly towards more decision-making power in their households, where women can involve in taking actions to all sectors in their life and family with their own strategic, tactical and operational way to manage their own decision.





## **Conclusion**

In conclusion, the fate of Afghan women's rights under the Taliban government is deeply concerning. Many legal regulations are affecting its law enforcement allowing for numerous forms of discrimination and violations of women's rights. Women's rights violations happening in Afghanistan today are not a completely new issue. Women have been made to suffer with injustices for many decades. The Taliban has become the most feared organization in the country because they disregard laws and regulations of the former Afghanistan government and implement their own form of government along with a different justice and legal system. If this situation lingers, then the fate of Afghan women will be very unpleasant. The history of the deteriorating social-justice and all forms of discrimination against women back when the Taliban ruled the country years before, is what is haunting Afghan women today. Therefore, Afghan women today are in desperate need of the enforcement of the international law and treaties alongside with support and contribution of the global community.

## **Suggestions**

After decades of endless armed conflicts that happen in Afghanistan, the violence is something that Afghan women must endure daily. This country is in desperate need of a definite law enforcement. Perhaps, the first thing to do is by controlling every political movement or especially the Taliban movement. The legal regulations in Afghanistan are still to this day, remain unclear. Therefore, it is suggested that the international law should be implemented until the Afghan government regains its power. The world needs to be actively involved in this situation to support this country until it can stand on its own feet. An international, independent monitoring organization needs to be created to ensure that all violations and crimes are documented and prevented. Lastly, the adaptation the 1951 International Convention and the 1967 protocol on the status of refugees are strongly recommended to ensure that basic human rights are met for refugees fleeing from Afghanistan.



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