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I dedicate this paper to the millions of Afghan women whose silent screams have gone unheard. Their resilience in the face of the systematic gender-based violence and their unyielding spirit in the struggle for their rights and dignity inspired this research. This work is a testament to their strength and a call to the world to listen, acknowledge, and act to ensure their voices are heard and their rights are restored.

Abstract

The enduring impact of prolonged conflict has severely strained the social, political, and economic fabrics of Afghanistan. Among the least documented yet most distressing aspects is the plight of Afghan women historically. Despite the historical variations of ruling ideologies there has been one common ground: Violations of women's rights with full impunity, and their continuous suffering.

Afghan women have endured immense hardships, exacerbated by prevailing social biases and discrimination that further compound the consequences of these conflicts. Moreover, Afghanistan, particularly outside major urban areas, continues to be deeply rooted in a patriarchal society, where religion and intricate tribal norms and customs dictate social interactions. These religious values and cultural codes and patterns significantly shape the roles and status of women in Afghanistan.

Through a comprehensive and thorough examination of the underlying causes of gender-based violence¹ against women in Afghanistan, the researcher has illuminated a notable aspect—the continuous struggle between traditionalists and modernists. The majority of traditionalists, residing in rural Afghanistan, hold profound respect for an 'old normal' which consists of age-old norms and harmful entrenched traditions that are mostly in non-conformity with the contemporary approach to governance. On the other hand, the modernists, primarily concentrated in urban areas, persistently endeavour to replace traditional norms with a legally endorsed new normal and new paradigm that aligns with human rights and modern governance principles. Consequently, Afghan women who have been historically burdened by the weight of entrenched traditions are also shouldering the substantial load of this ongoing struggle.

¹ "Violence which is directed against a woman because she is a woman or that affects women disproportionately". See Convention on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, para 1. See also Section II. A. International Framework of this report.

This research underscores four key themes and their respective sub-themes, contributing to the complex nature of the ongoing struggle. These themes—1) Socio-cultural Norms,² 2) Religious Misinterpretations and Misconceptions, 3) Ideological Politics and Political Expediency, and 4) Impunity and Lack of Accountability—serve as the foundational factors behind the infringement and violation of women's rights in Afghanistan.

Moreover, this study highlights two distinct yet interconnected cyclic patterns that perpetuate various forms of women's rights violations, further embedding and deepening them in Afghan society. These patterns are categorized based on their characteristics as 1) Circular Viciousness of Women's Rights Violations, and 2) Vertical Viciousness of Women's Rights Violations.

Introduction

Background

RWI's Afghanistan Programme was established in September 2021, in cooperation with, and with funding from, the Swedish International Development Cooperation Agency (Sida).

After the Taliban takeover of Kabul in August 2021, Sida and RWI agreed that it was important to keep the human rights situation in Afghanistan high on the international agenda, to support Afghans with opportunities and platforms to continue their work for human rights in Afghanistan, and to take an active role in informing public discourse and stakeholders supporting Afghans in this context.

The RWI programme started on a small scale in 2021-2022 and was then expanded with raised ambition and resourcing as of October 2022.³ The programme aims to support academics and professionals from Afghanistan in public outreach on human rights and gender equality in Afghanistan.

Aligned with these goals, my research delves into an in-depth analysis of the underlying factors contributing to the violation of women's rights in Afghanistan. This exploration is pivotal in understanding the barriers to achieving gender equality.

Research Motivation and Objective

The historical struggle for women's rights in Afghanistan is a poignant narrative of resilience against a backdrop of relentless socio-political upheaval and ideological conflict. This paper delves into the complex relations between the cultural, religious, and political forces that have shaped women's experiences in Afghanistan under the rule of various regimes. From the reforms initiated by progressive

² The UN's Committee on the Elimination of Discrimination against Women (CEDAW Committee) describes "harmful traditional practices" as: "traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles" and perpetuate "widespread practices involving violence or coercion, such as family violence and abuse, forced marriage.... Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them equal enjoyment, exercise and knowledge of human rights and fundamental freedoms." See: General Recommendation No. 19, 1992.

³ Raoul Wallenberg Institute (2022) <https://rwi.lu.se/afghanistan-programme/>

leaders to the severe restrictions imposed by the Taliban, the journey of Afghan women's rights reflects the complex interplay between traditional values and the quest for gender equality.

This analysis aims to unravel the layers of historical context, social norms, and international influences that have perpetuated gender persecution in Afghanistan. It highlights the need of accountability for continuous gender-based discrimination against women and girls in Afghanistan. The main objectives of this research are:

- To understand the socio-cultural beliefs and customs that contribute to women's rights violations in Afghanistan.
- To understand the political factors that contribute to negative or insufficient positive interventions of governments and political setups to prevent women rights violations in Afghanistan.
- To understand how religious interpretations affect Afghan women in terms of their rights.
- To understand if there are sufficient national and international accountability mechanisms that could contribute to the prevention of women's rights violations in Afghanistan.

Research Question

What socio-cultural and political factors exacerbate women's rights violations in Afghanistan and how can international legal frameworks contribute to address these violations?

Under this overarching question, the following themes are addressed in this paper:

- a. What socially consolidated beliefs and customs shape degrading perceptions towards women in Afghan society?
- b. What women-suppressing perceptions have been galvanized by Islamic fatwas and are locally perceived as Islamic teachings in Afghanistan?
- c. What are the societal consequences of the widespread conservative stance against Islamic and human rights of Afghan women amongst conventional politicians and political parties.
- d. How can the ICJ and ICC and other international legal frameworks become engaged and contribute to addressing women's rights violations and ensuring accountability in this regard?

Research Structure

The Research Report is structured into five chapters. The first chapter focuses on the introduction, providing background information on the topic and outlining the research objectives and research questions.

The second chapter details the research methodology, explaining the data gathering methods, sampling techniques, and the data analysis framework.

The third chapter presents a comprehensive literature review, covering a wide range of topics from the broader definition of women and violence to the specific socio-cultural and political landscape of Afghanistan. The literature review delves into the journey of womanship in Afghanistan, highlighting

the challenges they face from birth through adulthood, including child and forced marriages, limited access to education, and systemic violence and discrimination. It also explores the complex interplay of religion, politics, and ideology in shaping women's rights and status.

The fourth chapter focuses on analysis of the data gathered during the literature review and via interviews and focus group discussions. In this chapter, a comprehensive discussion is carried out on different aspects of the research questions backed by the data gathered. The findings of the research are presented in this chapter.

Finally, the fifth chapter encapsulates the study's conclusions while offering policy recommendations.

Methodology

Methodological Choice and Data Collection Methods

A multimethod qualitative approach was used to carry out this research. Three qualitative data collection methods were used as primary methods for gathering data, which are summarized as follows:

Documentation Review

In order to deeply and impartially understand the current and historical position of women and their rights in Afghanistan and the Afghan context, the researcher carried out a thorough and comprehensive documentation review. During this process, different literature and documents available and accessible to the researcher were used. Although a thorough and comprehensive systematic review was not carried out, the researcher tried to gather, study and use as many resources centred around women and women's rights in Afghanistan as possible. These resources included but were not limited to the UN special rapporteur on human rights in Afghanistan reports, research papers, books, World Bank reports, reports by human rights activists and organizations, etc., in three languages, i.e., English, Pashto, and Dari. The documentation review was used as an informing process for the subsequent data collection methods and supported identifying a priori themes which formed the cornerstone of the rest of the data collection and analysis processes.

Semi-structured Interviews

Considering the descriptive and exploratory nature of the research, semi-structured interview was considered as the main data collection method from primary sources. Through this approach the researcher had the ability to reorder the interview questions with different interviewees to provide the environment to elicit information in the best possible manner. Furthermore, the semi-structured interviews enabled the researcher to add follow up questions when needed to obtain detailed explanations of different opinions of different interviewees. It also allowed the interviewees to provide their standalone opinions without influencing others and/or being influenced by others' opinions. The core questions considered for these semi-structured interviews were 35 in number and were the same for all interviewees; however, the follow up questions and the order of questions were unique to each individual interviewee. It is also worth mentioning that the mechanism through which interviews were conducted ranged from face-to-face interviews to online and tele interviews.

Focus Groups

Focus group discussions facilitated by third parties was the third data collection method used in this research. Besides other advantages of focus group discussions, the researcher chose this method over other available ones mainly due to the fact that through such discussions the participants' firmness on conveyed opinions could be measured. The contradicting and conflicting arguments among the participants allowed the researcher to understand how firm they stood on their standpoints. Furthermore, it created more dynamism within the group which resulted in deeper discussions and revealed the contrasting as well as shared opinions and beliefs of the participants. All of the methods were used to triangulate the consensus on specific themes.

Sampling Technique

The sampling techniques used in this research fall under the non-probability sampling technique. The researcher used an amalgamation of purpose sampling with convenience sampling throughout the identification process of interviewees. Through purposive sampling, interviewees were identified and selected based on their specific and unique nature of experience in the field of women's rights and women-centred initiatives in Afghanistan. The interviewees ranged from politicians, activists, business community to religious scholars and housewives and students. However, considering the availability and accessibility barriers, only those were selected who could be conveniently accessed.

It is worth mentioning that the researcher's vast network of human rights defendants and politicians contributed invaluable to conveniently accessing the interviewees.

Interview Structure and Sequence

Considering the research objectives and research questions, upon the initial study and critical review of prominent literature, interview questions were designed around socio-cultural norms, political factors, religious interpretations and accountability mechanisms focused on Afghan women and their rights. The language of the questions was adjusted in accordance with the level of knowledge and literacy of the interviewees; however, it was made certain that the core questions' meanings remained the same for all interviewees. It is also worth mentioning that the follow-up questions were not always the same for all interviewees and were posed as deemed necessary to elicit better and more detailed information from each specific interviewee. Wherever and whenever possible the researcher tried to capture information about interviewees' accentuations and body, in her personal reflective diary.

The semi-structured interviews were carried out with 35 individuals of which 8 were male participants and the rest were female participants. This sample represented 6 groups namely politicians (4), religious scholars (2), activists (9), business community reps (3), housewives (3 rural women and 4 urban housewives) and students (4 high school female students currently residing in Afghanistan and 6 university students from Afghanistan and abroad).

Although the planned time for each interview was considered one hour or thirty minutes, in practice interviews lasted from forty-five minutes to one hour and forty-five minutes. In order to maximize the

optimality of data elicitations, the interviews were carried out in two batches. In the first batch it was made sure that at least one participant from each interview groups should participate so that an overall preliminary picture could get depicted of women's rights violations. In the second batch the participants were interviewed upon their availability regardless of any sequence of representative groups. All interviews were carried out in the Pashto and Dari languages and were recorded and transcribed for analytic purposes. However, the quotations of interview are translated into English in this paper. For confidentiality purposes each interviewee is codified by a prefix of IN followed by the number of interviewees, e.g., IN1 or IN11.

Data Analysis

In order to optimally analyse the collected data, template analysis was used. Amongst other reasons, template analysis was used due to its high effectiveness and efficiency in systematically analysing the qualitative data and enhancing the rigor and auditability of the qualitative analysis. During the documentation review, this method was used to identify and analyse recurring and repetitive themes and/or patterns within the reports, books, and other documentations. This helped the researcher identify prominent themes within the studied documentation and analyse them through an iterative approach. The transcribed interviews and focus group discussions were thoroughly studied, coded and analysed to find patterns and themes. Both a priori and in vivo codes were used during the coding process, i.e., some themes were identified in the preliminary critical review of the documentation and other themes emerged throughout the iterative analysis of the transcribed data. The number of themes were higher at the beginning; however, after repetitive analysis of the data, they were reduced to a handful of themes which will be discussed in the relevant sections.

The researcher also used a reflective diary on a continuous basis during the analysis process to better understand the transcribed data and understand the accentuations during the interviews and focus group discussions.

Literature Review

Women and Violence

Women as human beings have been defined by academia in broader terms than the simple biological definition institutionalized in Afghanistan. From a biological and physiological perspective, women are defined by Martin, R. D. (1990), as "Adult human females, typically characterized by reproductive anatomy that includes structures such as ovaries, fallopian tubes, a uterus, and mammary glands."⁴

However, Lorber, J. in her book *Paradoxes of Gender* (1994) argues that women should not be solely defined by biology. She asserts that women with specific reproductive anatomy that is different from men also have specific gender identity, specific roles, and unique experiences within different historical and sociocultural contexts, which she believes that, besides biology, form the primary factors in a definition of women. In other words, she argues that gender should not be reduced to solely biological

⁴ Martin, R. D. (1990). *Primate Origins and Evolution: A Phylogenetic Reconstruction*. Chapman & Hall.

differences. Instead, the interplay of different factors including social, cultural, environmental, historical, institutional and other factors construct the meaning of gender.⁵

Furthermore, with contemporary history's growing focus on human rights in general and women's human rights in particular, the definition of women has been further expanded to include a rights aspect within it. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines women from a human rights perspective and states that "women are individuals entitled to the full range of human rights and freedoms, irrespective of their sex or gender identity."⁶

Women as human beings inherently possess non-negotiable human rights. Donnelly, J. defines human rights as a set of universal rights inherent to all by virtue of their humanity, irrespective of their citizenship, nationality, ethnicity, gender, or any socio-cultural or other characteristics. He argues that human rights are equal, unchallengeable, and universal in every society and context and no person or entity can unlawfully deprive an individual from their rights.⁷

However, human rights violations are a serious challenge in today's world. There are many ways in which human rights violation can occur. Baderin, M. A. (2003) asserts that human rights violations occur upon breaking and breaching of the universally recognized and accepted freedoms and rights which have been outlined in national and international human rights conventions and other instruments.⁸ These violations can occur in any way that can result in abuse, restriction, or denial of sociocultural, political, economic and/or civil rights.

One pervasive type of such violations is violence against women. The Declaration on the Elimination of Violence Against Women (1993) defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life."⁹

Afghanistan also suffers from different forms of violation of human rights, particularly women's human rights. Due to this depth and pervasiveness of women's rights violations, The U.N. special Rapporteur Richard Bennett and the U.N. working group on discrimination against women in their June 2023 report argue that "Women and girls in Afghanistan are experiencing severe discrimination that may amount to gender persecution – a crime against humanity – and be characterized as gender apartheid,¹⁰ as the de facto authorities appear to be governing by systemic discrimination with the intention to subject

⁵ Book: Lorber, J. (1994). *Paradoxes of Gender*. Yale University Press.

⁶ United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.

⁷ Donnelly, J. (2003). *Universal Human Rights in Theory and Practice*. Cornell University Press.

⁸ Baderin, M. A. (2003). *International Human Rights and Islamic Law*. Oxford University Press.

⁹ UN Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December 1993, Article 1.

¹⁰ "The term gender apartheid (also called sexual apartheid[a] or sex apartheid) refers to the economic and social sexual discrimination against individuals because of their gender or sex. It is a system enforced by using either physical or legal practices to relegate individuals to subordinate positions. Feminist psychologist Phyllis Chesler defines the phenomenon as "practices which condemn girls and women to a separate and subordinate sub-existence, and which turn boys and men into the permanent guardians of their female relatives' chastity."

women and girls to total domination.”¹¹ The pervasiveness and depth of women’s rights violations that start from families and expands through to society have been documented in much academic literature. Zaker, R. (2012) asserts that the stereotype of subordinated women is so deep that violence is accepted as a normal act by abused women.¹² Common gender stereotypes limit the roles of women to reproduction and service to household members.¹³ These stereotypes and their role in promoting gender-based violence are well preserved at every stage of Afghan women’s lives from gender reveal to death, making them confined to the home or grave. Thus, it is important to know what socio-cultural, religious, economic, political, and other factors contribute to expansion and promotion of these violations in Afghanistan. The subsequent sections delve deeper into these factors to provide a deeper understanding of women and their rights in Afghanistan.

Women in Afghan Society and Culture

Afghanistan is a multi-ethnic mountainous country with a social structure consisting of Maliks, farmers, bourgeois, labour, intellectuals, the religious class, and others.¹⁴ The majority of the Afghan people reside in rural areas and are engaged in agriculture.¹⁵ Like many other countries, Afghanistan also still bears the weight of a traditional male-dominant society and male-dominant history due to different contributing factors including its geography and mountainous terrain.¹⁶ As Dr. Kazem argues, the male dominance of Afghanistan stems from the ancient concepts of power where the physical strength of a human being was considered the only constituting factor of power. He states that the relatively higher strength and physical power of men were used to ensure the security of their lands, valuables, and the weak including women and children. Thus, this way of life contributed to the consolidation of a social norm, where men feel responsible to protect women who were relatively weaker in terms of physical strength. This in turn has contributed to a social construct in which, like other valuable things, women should be kept safe with high safety measures even sometimes at the cost of their basic rights. Thus, regardless of the roots, in tribes and clans in almost all rural areas and in some urban parts of Afghanistan, families still try to hide the existence of their female family members, and it is still a taboo to disclose the names of female members of the family.

Connell and Messerschmidt (2005) also assert that Afghanistan is considered to be a deeply patriarchal society in which the power relations are distributed unequally between women and men, and a dominant supremacy of masculinity still present in the society.¹⁷ Moreover, Diyarbakirlioglu and Yigit argue that Afghanistan has inherited a deep and fundamental gender divide stretching back a long way.¹⁸

¹¹ UN A/HRC/53/21 (2023), Available at: <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>

¹² Zaker, R. (2012). Intimate partner violence against women and its implications for women's health in Pakistan. disserta Verlag.

¹³ Saigol, R. (2002). At home or in the grave: Afghan women and the reproduction of patriarchy.

¹⁴ Angelfire.com, Available at: <https://www.angelfire.com/rnb/bashiri/Afghanistan/AfghanOverview.html>

¹⁵ Ibid

¹⁶ Sayed, A.Kazim (2005) Afghan women under the pressure of Tradition and Modernization, first edition San Jose, CA

¹⁷ Connell and Messerschmidt

¹⁸ Ibid (n12)

Considering these divides and prolonged male-dominant ecosystem, there have been some negative social constructs which have adversely affected Afghan women throughout history.

The Journey of Womanship in Afghanistan

As mentioned above, Afghanistan has been a male dominant and patriarchal society, and the vicious cycle of women's rights violations starts upon birth and continues till her death. As reported in MSH's Occasional Paper No.06 (2007), in married Afghan families, a son is the preferred child for any newlywed couple. The paper further adds that constant pressure is exerted on a married woman by her husband and in-laws and even by the community to deliver sons rather than daughters.¹⁹ Despite the fact that science has proved that it is the male sperm that determines the sex of the child, this is not understood in Afghan society and the pressure is exerted on women.²⁰ Adding to the intensity of expecting delivery of a son rather than acceptance of a baby girl, is the norm where a son is considered the continuation of familial lineage. Nordberg, J. (2015) states that the birth of a son is welcomed as a symbol of familial lineage continuation and a future breadwinner for the family.²¹ Furthermore, Marie Stopes International (MSI 2004, p.4) also discusses the lower status of girls in Afghan families and states that sons are considered important in Afghan families and should ideally outnumber daughters as they will be family supporters and they will earn for their families (1-2a). Ghobar in his famous book, *Afghanistan in The Course of History*, quotes a famous adage: "You should not be among tribes without a relative, among relatives without a brother, and among brothers without a son".²² This adage of Afghanistan explicitly exhibits the deep-rooted social norm that a son is not only the pride of the family but also the saviour of familial lineage and thus is highly respected. However, a daughter who has none of the above characteristics is thus a burden on the shoulders of her family.

Upon the birth of baby girls, many families experience feelings of disgust and shame. A girl child usually becomes an unwanted burden for the mother, solely for her sex, over which she has no control.

An AIHRC research report (2007), states that the lives of Afghan children are largely determined by customs, particularly in the rural areas of Afghanistan.²³ The report further adds that due to a common custom across Afghanistan, families try to have many children, which puts all the family in jeopardy of malnutrition and lack of access to basic services. However, the burden is more on the shoulders of girl children due to prevailing gender-based discrimination in the country.²⁴ Dr. Kazem counts several factors contributing to the unfair and from time to time violent treatment of women, which include but are not limited to the perceptions about the cognitive deficiency of women, weakness of women, women being the source of depravity and sedition, as well as women being strangers' property.

¹⁹ Sato, M. (2007) Challenges and Successes in Family Planning in Afghanistan, DOI: [10.13140/RG.2.2.31365.96481](https://doi.org/10.13140/RG.2.2.31365.96481)

²⁰ Foundations of Biology (2017), Teleen, Available at:

https://www.csus.edu/indiv/t/telleena/biol300/biol300_su17_lecture11-extensionsofmendel.pdf

²¹ Nordberg, J. (2015). The underground girls of Kabul: in search of a hidden resistance in Afghanistan. Crown.

²² Ghobar. M.G.M: Afghanistan in the Course of History, Volume 1)

²³ <https://www.refworld.org/pdfid/483bedd22.pdf>

²⁴ Ibid

The implications of such perceptions result in discriminatory actions against girls and affect them from their childhood. An AREU (2013) research report states that such deep-rooted cultural codes of gender segregation with degrading and unfair treatment of women exist in Afghanistan. The report further adds that the sexuality and mobility of women, besides their other routines, are being strictly monitored and controlled by men.²⁵

One of the challenges that daughters in families with no sons face is hiding their identity as a girl and dressing and acting as boys. As Nordberg, J. (2014) states, this practice is called Bacha Posh meaning dressed as boys. She adds that one of the key reasons behind the concept and practice of Bacha Posh is to escape the social disgrace and stigma families with no sons can experience from their surroundings and the community.²⁶ Nordberg argues that most of the time families turn their daughters into sons to counter their segregated society.²⁷ This theft of identity creates many social and psychological problems for the Bacha Posh girls.

Girls are also deprived of their basic rights including education and schooling. Based on the World Bank's statistical data dashboard, the literacy rate of Afghan adults (for the age of 15 or above) was 37 percent in 2021. The literacy rate of Afghan female adults was 23 percent and of Afghan adult males was 52 percent in the same year.²⁸ The difference between the literacy rate of Afghan males and females explicitly indicates the deprivation of Afghan girls from their basic right, i.e., education.

Dr. Kazem argues that resistance towards girls' education is an imported norm institutionalized mostly in rural areas of Afghanistan by the British colonial powers to secure their greater interests.²⁹ He further adds that since education in general and female education in particular would undermine the influence, power, and interests of feudal and patriarchal setups, this imported norm was welcomed by narcissistic and selfish tribal, rural, and religious leaders. Ghubar also points to the institutionalization of resistance against women's education as an imposed imported norm. He tracks this back to the Mongol period in the current geography of Afghanistan and argues that in order to ensure political interests the effort was made to expand blind copying by subjects and limit research and creativity that could jeopardize their interests in their colonies. He asserts that when the Mongol Empire, led by Genghis Khan, reached the current Afghanistan region, his army encountered formidable opposition and resistance. Despite creating mass graves in various parts of Afghanistan, the Afghan people persisted in remobilizing and resisting against the Mongol army. According to Ghubar, Genghis Khan eventually grew furious at the Afghan people and commanded his forces to decapitate Afghan men and rip out women's bellies in their conquered areas to deter further attacks. The merciless and brutal tactics employed by the Mongol army instilled such terror among the remaining population that, aside from practicing passive Sufism in isolated mountains, they abandoned all other occupations. Ghubar asserts that the fear and terror was so serious that the people did not want to enter into any discussions that could affect their daily lives

²⁵ AREU. 2013. Women's Rights, Gender Equality, and Transition: Securing Gains, Moving Forward. Kabul: Afghanistan Research and Evaluation Unit. <https://areu.org.af/wp-content/uploads/2016/02/women-and-Transition.pdf>

²⁶ Ibid (n19)

²⁷ Huma Ahmad Ghosh 2003 A History of Women in Afghanistan: Lessons Learnt for the Future or Yesterdays and Tomorrow: Women in Afghanistan)

²⁸ <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS>

²⁹ Ibid (n14)

and daily politics. They thought any such initiatives might form a pretext for the Mongols to brutally kill people. Ghubar states that these events discouraged Afghan men and women from pursuing the then contemporary education, leading them to opt for a more passive way of life and leaving everything for the life hereafter. He further adds that since that time, the passive Sufism that encourages seclusion started to grow in this region, which affected women the most.

No matter what the reason was or when it started, however, the heavy burden of fights over power has been put on the delicate shoulders of women and girls in Afghanistan for many years, thus depriving them of the very intrinsic rights they naturally possess.

Marriages and Divorce of Afghan Women

Upon entering the teenage phase of life, a new array of challenges is waiting for Afghan girls. As Ghosh (2003) states “honour” is an important phenomenon in Afghanistan and women are considered the receptacles of “honour”. This encourages families to keep women hidden and voiceless no matter what they feel or what they go through.³⁰ Thus, when a girl becomes a teenager, she is considered the honour of the family and in an attempt to keep her safe from any kind of threats, she is kept hidden at the cost of her basic rights. At the same time, anyone in the community who for any reason would like to exert pressure on the family targets the girls in the family.

One of the challenges that teenage girls, particularly in the rural areas, face is child and forced marriages. The phenomenon of child and forced marriages in rural Afghanistan, as highlighted in the Washington Post January 2024 report,³¹ is an explicit example of the socio-cultural and political barriers that contribute to the violation of women's rights in the country. This practice stems from deeply ingrained cultural norms and economic desperation, illustrating how societal values and poverty intersect to perpetuate gender-based discrimination. The sale of young girls for marriage, driven by poverty and sanctioned by cultural practices, underscores the lack of socio-political structures to protect women's rights. It also reflects the systemic gender inequality embedded in Afghan society, where the commodification of female lives is both a consequence of and a contributor to their continued oppression.³²

Besides the challenges of child marriage, girls often face the problem of forced marriages. A Landinfo report (2011), with reference to the Sharia law and the Afghan Penal Code, states that without consent of both female and male a marriage is not valid and is considered a forced marriage.³³ However, in practice in Afghanistan there are different reasons which mean that often girls are not even asked if they want to get married.

Sometimes marriages are viewed as a means for tribal or groups alliances and total obedience of a girl to the husband and his family is expected. There are times that girls are used as a ransom to settle conflicts which is called BAAD. As the Landinfo report further adds, BAAD is a forced marriage to

³⁰ Landinfo, (2011), Afghanistan: Marriage)

³¹ <https://www.washingtonpost.com/opinions/2024/01/16/afghanistan-child-brides/>

³² Smith, Deborah (2009). “Decisions, Desires and Diversity: Marriage Practices in Afghanistan)

³³ Ibid (n32)

settle a conflict between two families. The girl is married to the victim's family to compensate their loss.³⁴ There are also times when marriages are driven by economic motives and poverty. The Women and Children Legal Research Foundation state in a report that one such kind of marriages is called BADAL. The report further defines BADAL as an exchange of two girls in a marriage relationship where two families agree to marry their girls to each other's sons.³⁵³⁶

Whatever the reason for forced marriages, the victim is the girl who bears not only the burden of the unwanted marriage, but also the heavy weight of the husband, his family, relatives and even her own family. A 2009 European Commission report by Deborah J. Smith on "Decisions, Desires and Diversity: Marriage Practices in Afghanistan" states that no matter how abusive and violent the marriage life is, it is a lifelong bond for the female partner. The report further adds that even the families of girls do not accept married girls back and refer to a common adage "Girls are sent to their husbands' house with wedding gowns and are only accepted and taken back in coffins". Furthermore, the report states that divorce is considered a social stigma and sometimes women kill themselves just to escape violent, abusive, and failed marriages.³⁷

Most often, even though marriages are established through the consent of both parties and are not considered forced marriages, the basic rights of women are not respected. With reference to the famous book of Jalaludin Dawani, "Akhlaq e Jalali", Ghobar critically argues that the rights of women have been disrespected in this book, which has added to the complexity of already complex socio-cultural norms of Afghanistan about marriage. In Akhlaq e Jalali, the author states that husbands should make their wives fearful of them so that the wives accept and obey all their instructions. It further adds that husbands should hide their love from their wives and should not take advice from them. Moreover, husbands should not let their wives know about their wealth and secrets and should prevent them from listening to other men or becoming visible to other men. Finally, men should not wed divorced women, women with children, or wealthy women.³⁸

"Lawame ul Ashraq fi Makarem ul Akhlaq," commonly known as "Akhlaq Jalali" stands as a renowned and impactful literary work penned in the 1400s by Jalaludin Mohammad Asad Sediq Dawani, a distinguished philosopher recognized for his practical wisdom. Considering the extraordinary philosophical insights of Dawani, Sultan Yaqub b. Uzun Hasan, the ruler of the Aq Qoyunlu from 1478 to 1490, chose him as his Chief Justice. Simultaneously, he played a significant role as an esteemed instructor at Bigum Madrasa in Iran, nurturing dozens of Islamic scholars until his passing in 1503. His seminal work, "Akhlaq Jalali," composed of three chapters, each containing multiple sections, delves into the spheres of ethics and politics. This literary masterpiece garnered widespread acclaim from monarchs, philosophers, and religious leaders across the region, spanning from Turkey to Iran,

³⁴ Ibid (n31)

³⁵ Early Marriage in Afghanistan: Women and Children Legal Research Foundation 2008)

³⁶ <https://www.trtworld.com/magazine/afghanistan-under-the-shadow-of-family-violence-26724>

³⁷ Ibid

³⁸ Ghobar. M.G.M: Afghanistan in the Course of History, Volume 1).

Afghanistan, and to the Indian subcontinent. Dr. Mohammad Karim Ranjani Asel states that the book's exceptional fame and influence can be attributed to its successful harmonization of jurisprudence (Feqa) and philosophy. In an era where philosophy faced resistance, Dawani, and like-minded philosophers, endeavoured to reconcile these seemingly disparate and different realms. Consequently, the book found a warm reception not only among religious and political leaders but also resonated deeply with the general public, exerting a profound influence on the societal fabric as a whole.

Inheritance and Ownership Rights of Afghan Women

Inheritance is considered a default Islamic right of all women across the Islamic world. Surah Al Nisa Chapter four verse number 7 of the Holy Quran clearly and explicitly commands the reader to respect inheritance rights of women and states “Allah command you as regard to your children’s inheritance; to the male a portion equal to that of two females.”³⁹ However, in Afghan society, in contradiction to Quranic verses, this right has been historically denied.⁴⁰ In accordance with Islamic tenets, women were given rights to their father’s and husband’s property during different regimes. However, tribal laws and sanctions have routinely taken precedence over Islamic and constitutional laws in deciding gender roles, especially through kinship hierarchies in the rural regions.

Moreover, since Afghanistan is a tribal country, many traditional inheritance practices restrict women's rights to inherit property from their fathers, serve to preserve feudal interests, and prevent the transfer of land ownership outside the original tribe, especially if a woman marries into a different tribe. Unfortunately, some of these historic women right’s violations aimed at preserving male power in society continued expanding their roots into the Afghan society because years of conflict, exacerbating by the rulings of different fundamentalist and extremist groups such as Mujaheddin and the Taliban, have eroded the cultural and educational infrastructure, further impeding women's ability to assert their legal rights and deepening the gender inequality in matters of inheritance.⁴¹ In Afghan society, land, women, and money or (زر، زمین، زن) are often considered symbols of honour, and Afghan men are obliged to protect the three of them. The lower rate of literacy and widespread ignorance of Islamic and national laws, exacerbated by patriarchal norms, have played a crucial role in depriving women of access to their Islamic, legal, and human rights.⁴²

The resistance to women's inheritance rights is also rooted in a transactional view of family support, where most believe that the hospitality and care provided to female relatives, particularly by fathers and brothers (when women are single) and husband and sons (when women are married) is sufficient. This stance, however, contradicts basic support with legal and religious rights, often leading women to move on from their inheritance due to fear, shame, or accepting the basic care provided for them by male relatives. Such practices not only contradict Islamic teachings on inheritance but also highlight a deep-rooted cultural conflict where women's legal rights are contingent upon the whims of their male

³⁹ Surah Nisa’ 4:11.

⁴⁰ <https://iwpr.net/global-voices/afghan-women-fight-inheritance-rights>

⁴¹ Nafi’, Nizam al-Din. (1377). Prohibitions, Volume 1 Kabul: Resalat publications

⁴² Akhtarkhil, S. M., Ahmadi, Q. U., & Adib, A. K. (2022). Studying the Factors of Deprivation of Women from Inheritance in Afghan Society. *Sprin Journal of Arts, Humanities and Social Sciences*, 1(11), 01-08.

relatives, exacerbating gender inequality.⁴³ One of the other reasons for women's being deprived of inheritance can also be poverty and the poor economic situation of the families, in which case Islam does not oblige male family members to pay inheritance. However, unfortunately the main and first target of poverty in families has always been women, whether that is child marriage for money⁴⁴ or deprivation of socio-economic rights, adding to the already fragile status of women in Afghan society.

Disobeying the Islamic teachings, particularly those regarding women's rights in general and inheritance right in particular, results in social unrest, escalating to extreme violence and injustice. Such scenarios underscore the profound consequences of straying from Islamic principles of justice and equity. The Quran points this out, saying "and whoever turns away from my remembrance and following my rules - indeed, he will have a depressed life, and we will gather him on the Day of Resurrection blind."⁴⁵ This verse highlights the spiritual and societal ramifications of ignoring divine guidance, especially in matters of rights and justice. The ongoing struggle with the issue of women's rights in Afghanistan is not only a cultural, social, political, and legal challenge but a reflection of a broader moral and religious crisis, where the societal peace and harmony prescribed in Islam are undermined by persistent violations of these fundamental principles.⁴⁶

Afghan Women and Religion

Afghanistan is an Islamic country.⁴⁷ Islam is based on the values of equality, justice, and peace.⁴⁸ However, the misinterpretation or fallacious interpretation of the religion on the matters of human interaction, specifically interaction between man and women, hijacked by mortals as a means to control others, is problematic and backward. Moreover, the status of women in society is less influenced by Islam and more by a tradition where women are raised with the beliefs of being incomplete, ineffective, and inefficient without a man, and therefore men can exploit women's weakness.⁴⁹ However, the question is why, despite Islam giving a high status to women, including the right to own property, land, the choice to marry and divorce, the chance to do business, and equality between man and women—as highlighted in the Quran: "O, people! We created you from a male and a female, and We made you races and tribes, so that you may come to know one another. The best among you before Allah is the most righteous. Allah is Knowing and Aware"⁵⁰—women in Afghanistan are always suppressed, thus providing men the right to dominate those who are dependent on them. This is mostly thought from uneducated or semi-educated Mullahs through yellow religious books:⁵¹ "The Yellow Religious books are important texts that have significantly contributed to the spread and preservation of Islamic teachings. These hand-written books, primarily in Arabic, cover a wide range of religious topics,

⁴³ Ibid

⁴⁴ <https://www.washingtonpost.com/opinions/2024/01/16/afghanistan-child-brides/>

⁴⁵ Surah Taha (20:124).

⁴⁶ Ibid

⁴⁷ Niaz, U. (2003). Violence against women in South Asian countries. *Archives of women's mental health*, 6, 173-184.

⁴⁸ Kamali, M. H. (2013). Peace as a universal Islamic value. *ICR Journal*, 4(2), 169-187.

⁴⁹ Ibid (n14)

⁵⁰ Quran 49:13

⁵¹ Yellow Re

including Quranic interpretation, Hadith, Islamic Law (Fiqh), and Sufism.⁵² They are known as 'Yellow' books because of the yellow paper they are traditionally printed on, a practice that became popular in Indonesia in the 20th century.⁵³ While these texts have been translated into various languages, their original Arabic versions require a deep understanding of the language. In Afghanistan, where literacy rates are low, this has posed a challenge for religious clerics' comprehension. As a result, these books have been widely misused in Madrasas, where they have been employed in strategies to brainwash young people into extremist ideologies encouraged to blow themselves up."⁵⁴

The lower literacy rate among women in general and knowledge of their human and Islamic rights in particular allow men to violate the rights of women and subject them to unimaginable suffering and pain with full impunity. There is an active struggle within the community, including between men and women, about the meaning of justice, equality, women's rights, and the need to tackle the suffering of women. The U.N. Women 2019 report indicated the overall literacy rate of women in Afghanistan is 17% and below 2% in some provinces.⁵⁵

Therefore, not only Taliban but several other groups have used Islam and illiteracy as tools to suppress women. Following the Soviet invasion of Afghanistan, the rallying cry, "Islam is in Danger," eclipsed nationalistic sentiments.⁵⁶ However, Islam was not under threat; rather, the invasion facilitated extremist groups' incursion into an Islamic nation. Therefore, post-invasion, referencing Islamic verses and Ahadith became commonplace among Afghans in Pakistan, dismissing anything perceived as Western or anti-Islam.⁵⁷

Following the collapse of the pro-Soviet government and the failure of the Mujahideen groups to agree to power-sharing arrangements, the nature of the civil war in Afghanistan changed. With the fragmentation of political power and territory under the control of different militias, anarchy spread across the country.⁵⁸ Alliances and hostilities between the warring factions were often based on personal loyalties, some of which were purely tactical and short-lived. As territory changed hands after long battles, local populations were subjected to violent retaliatory punishments by the victorious forces. Women were often treated as spoils of war.⁵⁹ Many women were raped by armed guards during 1992 - 1995.⁶⁰ Rape by armed guards seemed condoned by leaders as a method of intimidating people and rewarding soldiers. A harrowing account from March 1994 recounts a 15-year-old girl being repeatedly raped in her house in Kabul's Chel Sotton district after armed guards entered the house and killed her

⁵² Ja'far, J., & Iqbal, M. (2023). BAYANI EPISTEMOLOGIES IN MODERN INDONESIA: The Contribution of Al Washliyah Ulama to Quranic Exegesis Studies. *MIQOT: Jurnal Ilmu-Ilmu Keislaman*, 47(1), 1–17.
<https://doi.org/10.30821/MIQOT.V47I1.1079>

⁵³ Bruinessen, M. M. van. (1994). *Pesantren and kitab kuning: continuity and change in a tradition of religious learning*.

⁵⁴ <https://www.bbc.com/news/world-asia-27250144>

⁵⁵ <https://asiapacific.unwomen.org/en/countries/afghanistan/about-us>

⁵⁶ Ibid(n14)

⁵⁷ Ibid

⁵⁸ Ibid(n20)

⁵⁹ Ibid

⁶⁰ Ibid (n14,20 and 54)

father for allowing her to go to school.⁶¹ Several Afghan women reportedly committed suicide to avoid such a fate. In one case, a father who saw Mujahideen guards coming for his daughter reportedly killed her before she could be taken away.⁶² Scores of Afghan women were abducted and detained by Mujahideen groups and commanders, then used for sexual purposes or sold into prostitution. Some were victimized for belonging to a particular religious or ethnic group or by commanders or guards allied to an opposed faction.⁶³ Another young Afghan women committed suicide out of fear of being subjected to rape by the former Afghan vice-president Marshal Dostum's soldiers in Macroryan; she was then buried in Macroryan park in the capital Kabul and her story is one of the most famous, being recalled by all Macroryan's inhabitants.⁶⁴ Amnesty International reports of wartime rape during the civil war of the early 1990s indicate that it was a systemic crime, deliberately orchestrated against women by antagonistic warlord factions. Fully aware of the social, psychological, and physical impact of this strategy, warlords advocated the use of rape campaigns to intimidate and terrorize both rural and urban populations, particularly those of different ethnic origins. In some cases, rape was used as a form of punishment against women and girls who were educated or those who were trying to go to school. Perversely, some former mujahideen used rape against women who were deemed to have loose morals, or whose conduct was not considered to be in accordance with their traditional beliefs and religious interpretation.⁶⁵

The Mujaheddin, just like the Taliban, banned women from going to school or taking employment, and subjected them to forced Hijab, because they too considered women as a source and centre of obscenity. Simply said, they too removed women from the human realm, as if women are merely tools for arousing lust and sources of corruption, requiring their confinement and denial of all their rights.⁶⁶ In reality, sexual nature is innate to both men and women. A man can evoke this feeling for a woman and vice versa. As a woman's attractiveness draws a man, so does a man's attractiveness draw a woman. Therefore, both can be sources of corruption; hence, confining one and freeing the other cannot save society from the evil of corruption. Therefore, Allah first addresses men in verse 30 of Surah An-Nur, saying, "O Muhammad, tell the believers to lower their gaze,"⁶⁷ and then addresses women. However, Islamic preachers do not really focus on the man's obligation, instead trying to suppress using religion as a tool. Additionally, this verse does not specifically mention wearing a large chador to cover the face and body. However, the dominant misconception regarding women's obligations, especially giving it an entirely religious shape, has so pressured Afghan women that in any case, even if assaulted, the woman is considered at fault. The prevalent view is that perhaps the woman displayed her beauty to the man.

There is another verse that mentions a term that stands for the scarf. This verse says: "... And tell the believing women to reduce [some] of their vision and guard their private parts and not to expose their adornment (zinatahuna) except that which [necessarily] appears thereof and to wrap [a portion of] their

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ <https://www.amnesty.org/en/documents/asa11/003/1995/en/>

⁶⁶ Ibid (n14)

⁶⁷ Quran, Surah Nur: Verse 30

headcovers (Khumurihina) over their chests (Juyubihina) and not to expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons."⁶⁸ The term Khumurihina (plural of Khimar) stated in this verse refers to the scarf that women used to wear in the Arabian Peninsula and in all the other civilizations at that time.

The Qur'an invites believing women to fold their scarves (Khimar) over their chests (Juyubihina) to cover the upper part of their busts when they are in public. In fact, the classical commentaries report that the Arab women of Mecca used to uncover their neck and upper chest. For this reason, the Qur'an invited believing women to fold the sides of the Khimar over their busts.

Thus, the majority of Muslim scholars agree that believing women must cover their hair by putting on a Khimar and leave only their faces and hands uncovered in the presence of men who do not have a direct family relationship with them.

On the other hand, religion casts a formidable shadow. Two adjective cases exemplify the detrimental impact of misinterpreted religious narratives on women's rights. On March 19, 2015, Farkhunda Malikzada suffered a brutal death at the hands of an infuriated mob following false accusations of Quran desecration by a local religious cleric. Despite the heinous nature of the attack, neither the state nor bystanders offered her protection.⁶⁹ The harrowing tale of Farkhunda illustrates the deadly consequences of religious misinterpretations, and that which the average Mullah has on society. Similarly, the case of Anisa Rasouly, a candidate for the supreme court, reflects the systemic religious and cultural biases impeding women's progress. Despite significant advancements in women's rights, the Islamic Republic of Afghanistan witnessed a stark confrontation between the parliament and then-President Ashraf Ghani over Anisa's nomination, with parliament members citing religious pretexts such as a menstruating woman's supposed prohibition from touching the Qur'an. The drastic opposition from a parliament member from the western province of Herat, Nazir Ahmad Hanafi, who proclaimed it against Islamic law to appoint her, and vowed to campaign against her nomination, epitomizes the deep-rooted religious and cultural biases. These cases underscore a substantial gap between legislative progress and societal acceptance, further fuelled by misguided religious narratives.⁷⁰

The larger narrative of women being less intellectually capable or being seen as sources of discord, upheld by patriarchal structures, continues to reinforce gender biases, despite evidence to the contrary through the successes of Afghan women in various professional realms.⁷¹ The argument of physical strength as a basis for gender superiority is debunked by numerous instances of women performing tasks deemed challenging even for men.⁷² Yet, the patriarchal structures in Afghanistan perpetuate harmful narratives, most notably in intimate relationships where the burden of upholding family honour predominantly falls upon women, while men often escape accountability. This complex entanglement of misinterpreted religious edicts, cultural norms, and entrenched patriarchal systems delineates a

⁶⁸ Quran 24:31

⁶⁹ <https://www.theguardian.com/world/2015/mar/22/afghan-woman-beaten-to-death-kabul-mob-buried>

⁷⁰ <https://english.alarabiya.net/News/asia/2015/07/08/Afghan-lawmakers-reject-female-Supreme-Court-nominee>

⁷¹ Ibid(n14)

⁷² Ibid (n 14)

challenging landscape for advancing women's rights in Afghanistan, requiring a nuanced, globally mobilized, and culturally sensitive approach for effective mitigation and resolution.

Afghan Women and Politics

In the broader view of Afghan society, if a woman must work, her options are typically limited. She can either become a teacher or a gynaecologist.⁷³ Professions involving interaction with or visibility to men are generally discouraged. Engagement in other professions, especially in politics where a certain level of power is involved, is viewed with suspicion.⁷⁴ This is because power in Afghan society is traditionally attributed to men,⁷⁵ and any woman attempting to assume such roles is often believed to risk tarnishing her family's reputation; this can be attributed to the misogynist perception of Afghan society toward women,⁷⁶ while the authority of power by a man, no matter what the role, whether they deserve it or are qualified for it, is never questioned.⁷⁷ As described by former deputy minister of interior affairs Honsa Jalil, the first female women to hold a high-ranking security position, “Right after taking the seat my ethical principles were questioned in media -not only by public but people I knew. While I was able to bear all the humiliation and personal attacks my mother, a respected gynaecologist, started to feel disrespected and humiliated. While she carried pride in her work, at that time, her pride was diminished because people kept making embarrassing accusations about my family, and it broke her heart.”⁷⁸

Although, Afghan women have historically participated in politics despite social challenges and obstacles. Queen Soraya, the wife of Amanullah Khan, was notably the first woman to publicly remove her veil and advocated for a progressive women's rights agenda in the country.⁷⁹ Later, during the Soviet era, several women were appointed as ministers and parliamentarians.⁸⁰ However, the political advancements made by women, especially during King Amanullah Khan's reign and under Soviet-supported regimes, were often dismissed by extremists as anti-Islamic tactics intended to corrupt society, justifying war.⁸¹

A consistent strategy, particularly employed by foreign powers like the U.S., has involved leveraging women's political status for their own interests. The rights of Afghan women and girls have often been secondary to other priorities, such as counterterrorism and peace efforts. For example, the U.S.-backed

⁷³ Ibid (n19)

⁷⁴ Ibid

⁷⁵ <https://www.usip.org/sites/default/files/SR380-Women-s-Leadership-Roles-in-Afghanistan.pdf>

⁷⁶ Atwood, M. (2022). *We are Still Here: Afghan Women on Courage, Freedom, and the Fight to be Heard*. Penguin. Page 66.

⁷⁷ <https://kabulnow.com/2023/12/the-survival-of-the-bonns-legacy-depends-on-its-material-impact/>

⁷⁸ Ibid (n78)

⁷⁹ Ibid (n19)

⁸⁰ Ibid

⁸¹ Ibid(n7)

Mujahideen, a group that favoured keeping women confined to their homes, was primarily driven to combat the Soviet invasion to prevent women from gaining more rights and social roles. This motivation was downplayed by the United States, which claimed that Afghanistan faced more pressing issues, suggesting that women's rights could be addressed later.⁸²

This pattern was echoed in the Doha peace agreement signed in February 2020 between the U.S. and the Taliban,⁸³ which severely undermined women's rights and ceded control of Afghanistan to a regime known for systematic gender-based discrimination, segregation, and gender apartheid.

In Afghan society, politics has traditionally been dominated by men,⁸⁴ who have the freedom to move outside the home, engage in public gatherings like Jirgas,⁸⁵ and present themselves as physically, mentally, and emotionally capable. They are seen as authorized to mobilize people and improve lives, which is viewed as a prerequisite for leadership in Afghanistan.⁸⁶ Men are involved in resolving matters of families, villages, and the country in accordance with Islamic Shariah and Afghan culture.⁸⁷ On the other hand, women's passive economic role often prevents them from emerging as leaders in the family and society. Women are generally relegated to roles as homemakers and child bearers and are discouraged from participating in social and political life.⁸⁸

During elections, many women end up voting for candidates chosen by their fathers or husbands rather than making independent choices.⁸⁹ While some women in urban areas attend election campaigns, participation is much lower in rural Afghanistan.⁹⁰

The ideal woman in Afghan society, irrespective of tribe, ethnicity, or religious belief, is one who stays at home, takes care of the family, is obedient, and not outspoken. Women who dare to break these social barriers are often viewed with suspicion and demeaned, branded as ill-mannered.⁹¹ Their stories are

⁸² Ibid (n 19)

⁸³ <https://www.state.gov/wp-content/uploads/2020/02/Agreement-For-Bringing-Peace-to-Afghanistan-02.29.20.pdf>

⁸⁴ Ibid (n78)

⁸⁵ "Jirga," a term from Pashto—one of Afghanistan's official languages—commonly describes a gathering of either a few or many people and signifies consultation. The word "jirga" is derived from "jirg," meaning 'wrestling ring' or 'circle' but is commonly used to refer to the gathering of people. These meanings of jirg and jirga strongly reflect the rituals and processes of the Pashtun traditional tribal jirga where people gather and sit in a large circle in order to resolve disputes and make collective decisions about important social issues.

⁸⁶ Ibid(n19)

⁸⁷ Ibid (n 14 and 19)

⁸⁸ Ibid

⁸⁹ Ibid (n19)

⁹⁰ <https://www.hrw.org/legacy/backgrounders/asia/afghanistan1004/4.htm>

⁹¹ Ibid (n 19)

used as cautionary tales to discourage other women from similar pursuits, exacerbating the distance between women in rural and urban areas.⁹²

The concept of sisterhood among Afghan women, especially politicians, civil society activists, and women's rights defenders is fragile,⁹³ as argued by German writer Andrea Fleschenberg in her German-language paper 'MPs in Afghanistan – conflicts, compromises, collaborations'. Despite occupying 25 percent of seats in parliament according to the 2004 Constitution (reduced to 20 percent in 2013), Afghan female parliamentarians not only struggled to form laws in favour of women but could not reach consensus on different issues such as divorce, child custody, and maternal leave.⁹⁴ For instance, Afghan female parliamentarians failed to pass the Elimination of Violence Against Women law, and the code remained as a presidential decree, susceptible to abolition by any subsequent president.⁹⁵ Additionally, female parliament members struggled to secure votes for a female candidate for the Supreme Court due to lack of collaboration and a specific agenda for removing barriers to gender equality.⁹⁶ In another instance, they spent three years electing the head of the Women's Rights Commission in Parliament, viewing it as a position of authority rather than an opportunity for collaboration.⁹⁷

As a result, women in Afghan politics often become pawns in men's power struggles, serving as placeholders supported by wealthy warlords, and are perceived as token figures or nominal defenders of women's rights.⁹⁸ This is due to their inability to assess their authority, form mutual support networks, and relate to one another's perspectives, hindering their effectiveness in advocating for gender equality and women's rights in Afghan society.⁹⁹

Afghan women in the Political Sphere

The idea of sisterhood in Afghanistan has long been ignored,¹⁰⁰ lacking the required tools to mobilize and support each other irrespective of ethnicity, tribe, language, religious beliefs, political beliefs, social status, and level of education. These tools have not only divided them but have played a significant role in subjecting them to stand against each other,¹⁰¹ preventing them from acting as a major, transformative force to end the misogynistic perception toward women. This lack of a common vision and mobilized agenda caused them to fail to strongly advocate for the inclusion of their rights in the Doha Peace Deal between the United States and the Taliban, resulting in the exclusion of women from the living sphere

⁹² Ibid

⁹³ Ibid

⁹⁴ dos Ramos Pinéu, A. F. (2010). Abgeordnete in Afghanistan-Konflikte, Kompromisse, Kollaborationen.

⁹⁵ <https://www.aljazeera.com/opinions/2015/1/2/where-afghan-law-fails-women>

⁹⁶ Ibid (n73)

⁹⁷ Ibid(n78)

⁹⁸ Ibid (n 19)

⁹⁹ Ibid (n 96)

¹⁰⁰ Ibid (n 19)

¹⁰¹ Ibid (n 78)

in Afghan society¹⁰² and the emergence of a state of systematic gender discrimination that has amounted to gender apartheid.¹⁰³

After the Taliban takeover of the country on 15, August 2021, a new local, grassroots movement of women's socio-economic rights emerged inside the country. The movement was mainly raised in the face of the Taliban's oppressive policies of gender segregation and systematic gender discrimination.¹⁰⁴ However, the women's movement's history dates back to 1960s: in 1968, when conservative members of parliament suggested that women should be banned from studying abroad, the Democratic Women's Organisation of Afghanistan (DOAW) (Sazman-e Zanan-e Dimokratik-e Afghanistan)¹⁰⁵ organized a protest, pointing out that this was against the constitution. Their protest resulted in the suggested law being retracted by parliament.¹⁰⁶

In 1970, several attacks occurred in Kabul, where mullahs condemned women walking in the streets unveiled and dressed in modern Western clothing, and unveiled women wearing shorts and miniskirts were attacked by men, some throwing acid at them. The DOAW organized a mass protest of 5000 women, demanding an investigation and the arrest of those responsible, resulting in both arrests and investigation of the attacks.¹⁰⁷

The recent women's right movement in Afghanistan under the name "Bread, Work, and Freedom" is also a non-violent movement¹⁰⁸ advocating for the basic socio-economic rights of Afghan women, which are often violated, leading to the Taliban's abuse of these women through beatings, arrests, and torture. When established women's rights activists were forced to flee following the Taliban takeover, a new wave of resistance emerged, often spearheaded by younger women and those from less privileged backgrounds.

In the two years since the Taliban's return to power, women's rights in Afghanistan have suffered significant setbacks and violations. The Taliban have issued over 40 decrees aimed at curtailing women's freedoms, both through formal documents and verbal announcements.¹⁰⁹ These measures have sharply curtailed women's roles in society, infringing on their social, political, and even personal rights. Despite the courage shown by female protestors in Afghanistan, they often lack crucial resources. Therefore, it is vital for Afghan women living abroad to build strong connections with those in Afghanistan, standing in solidarity and amplifying their voices on international platforms. Success in this endeavour requires a united front, transcending differences to pursue a shared vision of a just and dignified society for all Afghan women. However, the legitimacy and urgency of these demands are overshadowed by a culture of impunity and a lack of accountability for violations of women's rights,

¹⁰² Ibid (n7)

¹⁰³ Ibid (n12)

¹⁰⁴ <https://www.amnesty.org/en/latest/campaigns/2023/03/women-protest-and-power-confronting-the-taliban/>

¹⁰⁵ The DOAW was founded in 1965 in Kabul by [Anahita Ratebzad](#), [Soraya Parluka](#),^[2] [Kobra Ali](#), [Hamideh Sherzai](#), [Momenah Basir](#) and [Jamileh Keshtmand](#). Anahita Ratebzad served as the president of the organization in 1965–1986.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid(n14)

¹⁰⁸ Ibid.(n80)

¹⁰⁹ <https://www.usip.org/tracking-talibans-mistreatment-women>

further emboldening the Taliban's repressive actions. Consequently, there is a pressing need to evaluate the existing mechanisms for holding perpetrators accountable for these rights violations.

International Accountability Mechanisms

Historically, the international community has struggled to effectively hold those responsible for major violations to human rights and war crimes accountable. Over half a century elapsed between the Nuremberg trials and the founding of the International Criminal Court. During this period, temporary tribunals were set up to address conflicts such as those in the former Yugoslavia and Rwanda. Recently, new mechanisms have been developed to actively address human rights violations, applying all elements of transitional justice including but not limited to truth-seeking, reparations, institutional reform, and community-level reconciliation needed for durable peace in the country.¹¹⁰ In Afghanistan, following the Bonn Conference, the Mujahideen regained power. After the Doha peace agreement, the Taliban were reinstated, utterly disregarding the plight and rights of the Afghan people and particularly Afghan women. From what we explained above on the elimination of the Afghan constitution to abolishment of human rights institutions, it is evident that under the Taliban's segregated regime, there is a lack of national mechanisms for accountability and justice regarding the escalating violations of women's rights. However, as Afghanistan is a United Nations member state and has ratified certain international human rights and women's rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Political Rights of Women (CPRW), it is imperative to bring Afghanistan's case to international forums, venues such as the International Criminal Court (ICC), the International Court of Justice (ICJ), and mechanisms provided by CEDAW.

International Criminal Court (ICC)

Afghanistan ratified the "Rome Statute," an international law treaty that established the International Criminal Court, in 2003. This statute grants jurisdiction to the International Criminal Court to investigate and prosecute individuals for genocide, crimes against humanity, and war crimes. In November 2017, Fatou Bensouda, the then-chief prosecutor of the ICC, requested judicial authorization to investigate war crimes committed in Afghanistan. In March 2022, the Appeals Chamber of the court authorized an investigation into the situation in Afghanistan concerning the war crimes committed by the Taliban, the Afghan National Defence and Security Forces, and the US military Department of Defence and Central Intelligence Agency.¹¹¹ However, the Islamic Republic of Afghanistan, under President Ashraf Ghani, requested a deferral for a national investigation in accordance with Article 18's provisions. However, he was unable to provide sufficient information on the national investigation

¹¹⁰ <https://rwi.lu.se/wp-content/uploads/2023/03/Final-final-Outcome-Report.pdf>

¹¹¹ See Situation in the Islamic Republic of Afghanistan, ICC-02/17-138, Judgment on the Appeal Against the Decision on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, ¶ 79 (Mar. 5, 2020) [hereinafter Appeals Chamber Decision]. For further background on the ICC investigation in Afghanistan, see Mehdi J. Hakimi, The ICC and Afghanistan - Time to End Impunity?, YALE J. INT'L L. FORUM (Aug. 31, 2018), <https://www.yjil.yale.edu/forum-the-icc-and-afghanistan-time-to-end-impunity> [<https://perma.cc/DV57-W2BC>].

process and requested more time,¹¹² which the court granted to adhere to the principle of complementarity.¹¹³ This principle dictates that the court can only exercise jurisdiction if the country concerned fails to act. The Taliban's takeover of the country, facilitated by the Doha peace process¹¹⁴—which resulted in the release of senior Taliban members and those accused of war crimes—overshadowed the need for accountability and the end of impunity. Upon their takeover, the Taliban abolished all the laws, legislations and mechanisms in place during the Islamic Republic of Afghanistan intended to protect women's rights.¹¹⁵ Therefore, considering the lack of a domestic accountability mechanism, the ICC should assert its jurisdiction, particularly over crimes against women and girls committed by the Taliban, in accordance with its 2022 gender persecution policy. Although the Pre-Trial Chamber of the Court, in response to the Office of the Prosecutor's request to resume its investigation in 2021, asked the Secretary-General of the United Nations to inform them of the current authority representing Afghanistan,¹¹⁶ it is important to clarify that the current de facto authorities of Afghanistan cannot withdraw Afghanistan's ratification from the Rome Statute.¹¹⁷

However, the dire thirst for peace has often sacrificed access to justice and accountability, which has paradoxically contributed to the failure of the peace process as well. Afghanistan continues to be trapped in a vicious cycle of violence. While the primary reason for establishing the ICC was to end impunity and ensure that the most heinous crimes against humanity do not go unpunished.¹¹⁸ Therefore, the ongoing systematic gender-based discrimination against women of Afghanistan must be prosecuted by the court.

The current ICC prosecutor, Karim Khan, announced the resumption of the investigation of alleged crimes committed by the Taliban and ISKP (Islamic State Khorasan Province) after August 2021, thereby ignoring the crimes committed since 2001 and implying double standards. Nevertheless, there remains an opportunity to rigorously prosecute the violations of women's rights committed under the Taliban, amounting to crimes against humanity of persecution¹¹⁹ under Article 7 of the Rome Statute.

¹¹² Rules of Procedure and Evidence of the International Criminal Court, r. 53, U.N. Doc. ICC-ASP/1/3 (Sept. 10, 2002) [hereinafter Rules of Procedure and Evidence].

¹¹³ Article 18, Rome Statute

¹¹⁴ <https://www.state.gov/wp-content/uploads/2020/02/Agreement-For-Bringing-Peace-to-Afghanistan-02.29.20.pdf>

¹¹⁵ Ibid(n7)

¹¹⁶ Situation in the Islamic Republic of Afghanistan, ICC-02/17-165, Decision Setting the Procedure Pursuant to Rule 55(1) of the Rules of Procedure and Evidence Following the Prosecutor's 'Request to Authorize Resumption of Investigation under Article 18(2) of the Statute', at 9 (Oct. 8, 2021).

¹¹⁷ Rome Statute, supra note 4, art. 17(1)(a).

¹¹⁸ Prosecutor v. Gaddafi, ICC-01/11-01/11-662, Decision on the 'Admissibility Challenge by Dr. Saif Al-Islam Gaddafi Pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute', 77 (Apr. 5, 2019)

¹¹⁹ Persecution is defined as the intentional and severe deprivation of fundamental rights, contrary to international law, perpetrated against an identifiable group or collectively.

International Court of Justice (ICJ)

The International Court of Justice or the World Court is the primary organ of the United Nations for settling legal disputes submitted to it by states in accordance with International Law.¹²⁰ When a state grants jurisdiction to the International Court of Justice (ICJ), it means the state has given the court the authority to hear and make rulings on legal disputes involving that state. Once jurisdiction is conferred, the state is legally obligated to comply with the decisions made by the ICJ. Essentially, by accepting the court's jurisdiction, the state agrees to follow the court's rulings and implement them as required. This is a fundamental principle of international law, where states that have agreed to be part of treaties or conventions that recognize the ICJ's authority must adhere to its decisions.¹²¹

Afghanistan has given the International Court of Justice (ICJ) the power to decide on disputes between states concerning the application of two significant women's rights treaties: the Convention on the Political Rights of Women (CPRW) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This is done through jurisdictional articles in each treaty (Article IX for CPRW and Article 29 for CEDAW), where Afghanistan has consented that any other state party to these treaties can bring a dispute to the ICJ regarding how Afghanistan is implementing either of the conventions. However, since the de facto authorities (those who have control but are not officially recognized) in Afghanistan are not the formally recognized government, they cannot join or withdraw from these treaties on behalf of the state. Nonetheless, as the controlling regime, they are responsible for any violations of these treaties.¹²²

Both CPRW and CEDAW require states to first attempt to negotiate a solution to any dispute. If negotiations are unsuccessful, a state can then bring a case to the ICJ. While the CPRW does not specify a period for negotiation, CEDAW requires states to try for at least six months to resolve the issue through arbitration before they can file a case with the ICJ. This process ensures that states have a period to attempt to resolve their disagreements amicably before taking legal action. Presenting the case of systematic violations of Afghan women's rights before the ICJ does not mean the recognition of the Taliban as the case would be pursued against the state of Afghanistan as a UN member state rather than the Taliban who are the de facto authorities. Such was the case of *United States of America v. Iran*: the US filed a case against Iran despite not recognizing Iran.¹²³ Therefore, this is both the legal and moral obligation of the UN member states, particularly of those with feminist foreign policies: to take the case of the CEDAW and CPRW violation to the ICJ to deliver justice for Afghan women.¹²⁴ Afghanistan remains a signatory to the Convention on the Elimination of all forms of Discrimination against Women

¹²⁰ <https://www.icj-cij.org/history>

¹²¹ <https://www.icj-cij.org/how-the-court-works>

¹²² Kadir, M. Y. A., & Nurhaliza, S. (2023). State Responsibility of Afghanistan Under Taliban Regime. *Jurnal Media Hukum*, 30(1), 1-20.

¹²³ <https://www.washingtonpost.com/opinions/2023/09/13/afghan-women-international-court-justice/>

¹²⁴ <https://www.hrw.org/news/2023/09/12/what-world-needs-do-afghan-women>

(CEDAW),¹²⁵ obligating it to adhere to international human rights standards. Despite, this, the Taliban regime is not willing to comply with these laws in practice. Notably violating CEDAW by denying girls and women access to education and employment, they justify these actions by claiming adherence to a pure Islamic Sharia system. In response to a recently published UNAMA report on gender-based violence, the Taliban stated “Women have special rights and status in the Sharia, and all cases of violence against women are solved according to Sharia laws. Sharia law is the first mechanism in Afghanistan that all cases are dealt with according to it.”¹²⁶

Universal Jurisdiction

Universal jurisdiction represents a critical tool in international law for holding perpetrators of the most serious crimes accountable, promoting justice, and protecting human rights. It is a concept that allows states to transcend their borders in the pursuit of a global commitment to addressing atrocities that affect all of humanity.¹²⁷ As defined by the 2009 Princeton principle, “Universal Jurisdiction is a criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction.”¹²⁸

Universal jurisdiction can act as a potent and constructive instrument. Firstly, it serves as a means of accountability in situations where a state's domestic courts are ineffective or when political and security challenges impede justice, such as is the case in Afghanistan and more than 100 investigated cases attributed to Syrian state actors, ISIS, Daish, Al-Qaeda, and others involved in Syrian conflict.¹²⁹

It was first recognized in a significant way in the four Geneva Conventions of 1949, which are international treaties focusing primarily on the treatment of individuals in times of war.¹³⁰ The Geneva Conventions established that certain grave breaches, such as wilful killing or torture of protected persons (like prisoners of war or civilians), are of such serious concern to the international community that any state can prosecute the perpetrators, even if the crime did not occur on their territory or involve their citizens. The concept was further reinforced in the 1984 Convention Against Torture. This convention specifically obligates states that have ratified it to either extradite (send the accused to another country for prosecution) or prosecute individuals found within their territory who are accused of torture, if they do not extradite them.

The concept of universal jurisdiction in international law is based on the idea that certain crimes such as genocide, war crimes, crimes against humanity, torture, and enforced disappearance are so severe and detrimental to global interests that all states have the right, and sometimes even the obligation, to

¹²⁵ The Islamic Republic of Afghanistan ratified the Convention on the Elimination of all Forms of Discrimination against Women in March 2003.

¹²⁶ [The Handling of Complaints of GBV AWG English 141223 \(unmissions.org\)](https://www.unmissions.org/en/2014/11/141223)

¹²⁷ Ibid (n11) Princeton project on Universal Jurisdiction, The Princeton Principles on Universal Jurisdiction 28-29 (2001).

¹²⁸ Princeton project on Universal Jurisdiction, The Princeton Principles on Universal Jurisdiction 28-29 (2001).

¹²⁹ Doumit, Jessica. (2020). Accountability in time of war: universal jurisdiction and the strive for justice in Syria. Georgetown Journal of International Law, 52(1), 263-288.

¹³⁰ Universal Jurisdiction over War Crimes, INT'L COMM'N OF THE RED CROSS (Mar. 2014), <https://www.icrc.org/en/document/universal-jurisdiction-over-war-crimes-factsheet>.

prosecute the perpetrators of these crimes, regardless of where the crime occurred or the nationalities of those involved.¹³¹ This jurisdiction allows any state to prosecute these crimes, reflecting a collective interest and responsibility to address and punish these violations.

The concept of universal jurisdiction is grounded in international consensus and cooperation, as reflected in widely accepted treaties and resolutions. Some countries, including Sweden, Norway, and Germany, have incorporated universal jurisdiction into their national legal frameworks. This allows them to prosecute international crimes committed abroad by foreigners.¹³² This legal approach is particularly significant for addressing gender-based crimes, as outlined in the Rome Statute. Universal jurisdiction can be invoked in cases involving members of the Taliban, exemplified by the instance of a high-ranking Taliban member's travel to Germany in November 2023. Germany, having adopted Universal Jurisdiction into their national law, could actively utilize it to investigate and prosecute international crimes under the Code of Crimes against International Law.¹³³

Therefore, a formal accountability mechanism by the United Nations, similar to the International, Impartial, and Independent Mechanism (IIIM) for Syria is needed for Afghanistan.¹³⁴ This would enable the Afghan Civil Society in Diaspora to implement Universal Jurisdiction as part of an accountability framework for the long-sought justice. Moreover, countries such as Germany, Sweden, and France should support the quest for justice by Afghans in general and Afghan women in particular, within their territories.

¹³¹ What is Universal Jurisdiction? Ctr. for Just. & Accountability (last visited Aug 4, 2023), <https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/>.

¹³² Jenny Gesley, FALQs: The Exercise of Universal Jurisdiction in Germany, Libr. of Cong. Blogs (June 30, 2022), <https://blogs.loc.gov/law/2022/06/falqs-the-exercise-of-universal-jurisdiction-in-germany/>

¹³³ Deutsche Welle (2023) Outrage after Taliban member speaks at German Mosque, dw.com. Available at: <https://www.dw.com/en/outrage-after-taliban-member-speaks-at-german-mosque/a-67479874> (Accessed: 11 March 2024).

¹³⁴ On 21 December 2016, the United Nations General Assembly adopted resolution A/71/248, establishing the international, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011.

Discussions and Research Findings

Research Findings

After the comprehensive analysis of the primary and secondary sources gathered during the data collection process, several themes and patterns were discovered and identified. The refining process for analysis of the themes and patterns went through several iterative reviews and within each review the coding and clustering of the data was further adjusted and tuned to better reflect and systematically represent the findings of the research. Consequently, through the final stage of template analysis the data were coded and clustered into hierarchical themes and the roots of violence against women in Afghanistan were clustered into four major themes and ten sub-themes. The hierarchical thematic representation of the findings is depicted in Figure 1 below and is elaborated upon in subsequent sections:

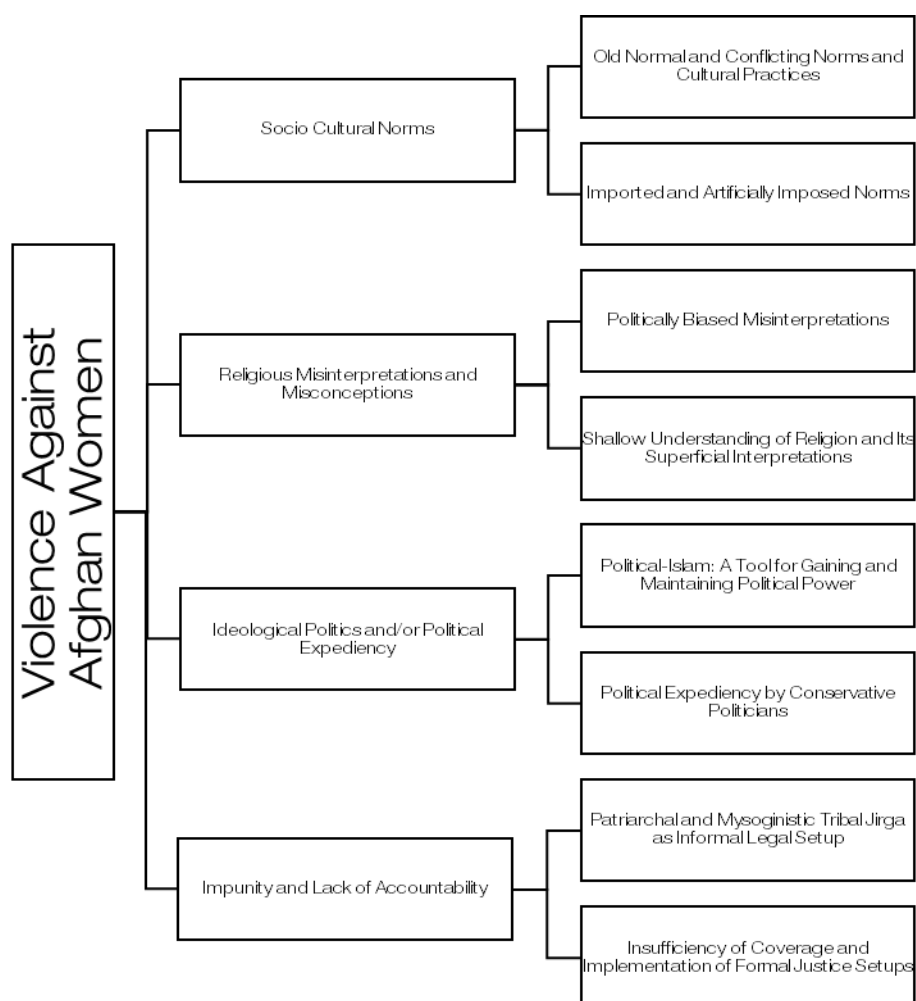


Figure 1: Roots of Violence Against Afghan Women

Hierarchical Representation of Themes and Sub-themes

Selected Socio-cultural Norms as a Platform for Violence Against Women

As stated in chapter three, socio-cultural norms are the building blocks of collective mentality in a society. Some cultural norms and social constructs contribute positively to the social life of a population in a geography and by the passage of time some play a negative role within a society. Despite the fact the Afghanistan is a rich country not only in terms of its physical and material capital but also from moral, social and cultural perspectives, there are some specific areas where social reforms are required.

In this paper those social constructs that require a comprehensive reform are grouped under two sub-themes which are elaborated in the next section. Before delving into details, it is worth accentuating that some of these social norms might have been effective in the past and worth maintaining; however, upon the passage of time and with the growth and development in different economic, technological, political and socio-cultural arenas, these norms are becoming obsolete and require reform.

The sub-themes are explained as follows:

Old Normal and Conflicting Norms and Cultural Practices

One major finding during the literature review, interviews, and focus group discussions was the existence of conflicting norms and cultural practices. The acceptance and exercise of traditionally rooted norms by one part of the society, particularly in rural areas, compared with the considering of them as the ‘old normal’ and outdated norms that contradict with 21st century moral values modern governance by another part of the society, constitutes the basis of these conflicting cultural practices in Afghanistan. This can be seen in the reluctance to use new facilities including basic health facilities, full obedience to a patriarchal system of life, acceptance of the fact that property ownership rights are only meant for men, or never letting wives know about husbands’ wealth and secrets.

During the interview sessions, IN1, who was from Ghazni, province clearly stated that:

“...I have never given birth to any of my children in a hospital...”

Upon a follow-up question about the reason for not going to hospitals she added:

“Besides lack of access to health facilities, my mother in-law would not agree to take me to the hospital as she had given birth to her children at home and she was still alive, why would I go to hospital...”

She even said that *“...my mother-in-law would be more excited to bring a new bride for my husband instead of wasting time to get me to the hospital...”*.

IN2 relayed a different story about her married life: she complained about the old normal and traditionally rooted norms and stated that:

“...upon death of my husband I was forced to marry my brother-in-law and none of us had consent for this marriage which ended up in divorce...”.

IN6 also had a complaint about her marriage, which was carried out in accordance with the old normal and old traditions that are not in line with human rights morals and values. She was a victim of child marriage and stated that *“...My father who was a conservative man never let me or any of my five sisters go to school...I got married when I was only 14 and my father thought that as a good Muslim it is his duty to get me married as soon as I reach my puberty...”.*

IN3 who was an active politician, who implied her dissatisfaction about old traditions and the old normal which is still considered normal in different areas of Afghanistan. She exhibited her frustration even with the political sphere, and in her interview stated *“... as women we were not being trusted and despite our relentless efforts, not only men but even some women would not share any information about the Doha process with us merely because we were not considered important...”.*

BAAD is another deeply rooted old cultural norm, which is common particularly in rural Afghanistan. IN4, who was a victim of BAAD and is now a mother of two children, but still bears the physical scars of beating, stated that *“...due to a conflict over a cow, my father accidentally killed a brother of my current husband. The conflict was settled by paying 50000 Afs and giving me in BAAD for my current husband who was 45 years old at that time and already had a wife...”* She was crying as she further added that *“.... I was only 17...”*. IN9, who is another victim of forced marriage though BADAL, is a 15-year-old girl married to a 45-year-old man who is already father of five children. She tearfully stated that *“...I was married to this man in exchange of his daughter for my brother and 200,000 Afs... I didn't want my life to end up this way (cried)... I wanted to marry someone at my own age... we don't match in even one single aspect of life and personality...”*.

As indicated in the literature review section, one common social norm in Afghanistan is the importance of a son in a family. IN8, who is the first wife of a husband with two wives and is a mother of only daughters (4 daughters) referred to this norm without any complaints as an important aspect of Afghan lives, and stated that *“...I couldn't bring a son for my husband and my family and after four daughters all whom were born through caesarean delivery, doctors told me that I cannot bring any other child... my husband married his second wife and after three other daughters she finally gave birth to a son...”* She added, smiling, that *“... I feel happy for my husband...”*.

Somehow all of the interviewees and different parts of the literature review reflect the fact that Afghanistan still hosts and nourishes some deeply rooted old norms which might have made sense once upon a time. However, in a modern society and considering a modern take on governance where human rights are respected, such practices are no longer acceptable or useful. As exemplified above with quotation from interviews, BAAD, BADAL forced marriage, child marriage, lack of trust for women, preference for a male child, lack of access to modern facilities including health and education, and more, are the old normal, and still new and applicable in Afghanistan.

Furthermore, the interviews also exhibited the tolerance level of women towards this old normal, which can be considered even more dangerous than the norms themselves. Thus, women should be educated about the new way of life which is based on human rights. The new normal which reflects a society where basic human rights are understood and respected by all should replace the old normal. The concept of embracing new

normal and a gradual farewell to the old normal is one of the key factors that should be considered in women's empowerment and women's rights advocacy agendas. However, it should be made certain that an open and informed acceptance rather than blind acceptance of socio-cultural norms is advocated as one of the first norms to be accepted in the new normal. This will make sure that in the future an old normal and old norms cannot become rooted so deeply that new norms cannot replace it.

Imported and Imposed Artificial Norms

The literature study reflects the fact that Afghanistan has a conservative society. However, the literature and interviews suggest that some socio-cultural norms which have particularly affected the status of women in the country are either not indigenous or are purposefully designed by external agents to ensure political and colonial interests.

During the interviewee sessions, IN5, who was a bright second year university student at Kabul university, stated that *"...I was a bright student of law faculty and with an aim to pursue a successful career in the future had chosen to study history and sociology books as my hobby... but now I am at home with no future at all..."*. In response to a follow up question about what her perceptions are about a ban on women's educations, she said that *"... it is obvious that this is something imposed on us by outsiders... I have studied history of Afghanistan, and I can name many women who contributed in success or failure of monarchies in Afghanistan... Obviously they were literate women based on the literacy levels of that time... there has never been ban on women education in Afghanistan's history..."*.

IN7, who has devoted her life to girls' education in Afghanistan, stated *"... Education ban was introduced in Afghanistan by external colonial hands and some internal hypocrite leaders and a bunch of useful idiots to create barriers against King Amanullah's reform agenda's and over through his reign..."*. In her conversation she indicated that it is obvious that schools were new in Afghanistan, but the education of girls had a long history in the country.

The discussion in the literature review section on women's veils and the emergence of Chadary in Afghanistan with a sole religious basis is another example of a non-indigenous norm in the country. IN10, who is a mid-career lawyer and an LLM degree holder, stated *"... as a student of Sharia and law, I do understand what is the meaning of Hejab in Islam... there is no mention of Chadary in any Ayaat of the Holy Quran or Ahadith e Nabawi..."*. In a follow up question regarding her opinion about the emergence of Chadary, she explicitly stated *"... It is not Islamic and it is not Afghani...."*.

IN17, who is a 39-year-old woman from a rural household and is living in a rural area of Paktia province, with her rural way of conversation said *"... Chadary is for Kabuli women..."* she further added that *"... one of my major activities during the harvesting season is harvesting of crops..."*. In response to a follow up question as to whether she encounters men when she goes harvesting, she replied *"... of course I do see men and they see me.... But no one dares to look at me with bad eyes (referring to the sexually motivated looks) ... I have a gun and will kill those who look at me with bad eye..."*.

The literature review and interviews suggest that some practices attribute to Afghanistan such as a ban on education, the specific form of Islamic veil called Chadary, the ban on women going outside or working, are not originally rooted in Afghan society. On the contrary, in untouched rural areas which do not pose a challenge to the power of politicians or carry strategic weight for power-thirsty leaders, women have a relatively higher level of autonomy. They go to Mullahs to learn whatever Mullahs want them to learn. They

go outside and mostly work on the agricultural lands without any compulsion to cover themselves from male strangers. Furthermore, even in some parts of Afghanistan, women are trained to use basic weapons.

Thus, it can be concluded that some norms have been introduced to Afghans and are covered by either a religious or cultural smokescreen merely to achieve specific political and colonial interests.

Religious Misinterpretations and Misconceptions

As explained in the literature review section, the concept, status, and dignity of women in Afghanistan are not well understood when based on the principles of Islam. Instead, the old deeply rooted South Asian cultural norms coupled with hypocritical and/or fallacious use of religious teachings have been used to describe women. Most of the time verses of the Holy Quran as well as specific parts of Ahadith e Nabawai (The narrations of Prophet Mohammad PBUH) have been decontextualized and/or literal meaning of specific parts of Islamic teachings have been used to elaborate regarding woman and their rights in the Afghan context with an aim of furthering political interests. This is mostly achieved by the religious guides hired by politicians and influential feudal leaders.

As was indicated by IN3, IN5, IN7, and IN10, as well with reference to the literature discussed under the relevant sections in chapter three, what has added to the intensity of women's rights violations, under the cover of religious teachings, is the blind-approval of anything coming from a so-called religious leader or mullah. Afghans, with the deep respect that they have for Islam and religious teachings, do not allow themselves to even check the authenticity of narratives and interpretations of Islamic teachings. Thus, Afghans have been and can be used easily and controlled with minimal interventions under the cover of religion. As indicated in the focus group discussions and interview sessions, another factor that has added to the acceptance rate of shallow interpretations of religious teachings in Afghanistan is the low literacy rate in Afghanistan. Critical discussions based on authentic religious books about interpretations of Quranic teachings are not normal practice among ordinary Afghans. Questions and critical discussions can be good tools to understand the real meanings of religious teachings and challenge shallow interpretations of the Quran. Asking religious questions without the fear of stereotyping will facilitate reaching the roots of religious teachings and understanding the real meaning of Quranic verses and Ahadith. Of note is that not all Mullahs or religious scholars are weak in knowledge or hypocritical in passing on Islamic teachings, but many such so-called religious scholars exist in Afghan society.

Based on the literature review and the interviews, two themes can be considered very common when it comes to women and religious teachings in Afghanistan. These two themes, which are elaborated upon in the following section, are I) Politically Biased Religious Misinterpretations and II) Shallow Understanding and Superficial Religious Interpretations.

Politically Biased Religious Misinterpretations

As stated in the literature review section, politically biased religious misinterpretations have a fairly long history in this geography. However, as indicated in the interviews, the biased religious misinterpretations started to inflate and expand when religion become a tool to gain political power. The recent history of Afghanistan particularly exhibits this fact.

IN3, who is a politician, quoted the former president of Afghanistan Dr. Najeebullah and stated that “...As Dr. Najeebullah had said... the Munbar (place where Mullah's preach in the mosques) should not be

conquered by extremist otherwise things will get hard to be controlled...". She further added that "... no matter what we say about women even if we bring religious reasons, a Mullah with one misinterpretation will win over us...". IN17, who is a male religious scholar stated that "...there is no doubt that some so-called religious leader and scholars try to interpret Islamic teachings to ensure their personal interests...Allah will never be merciful on such people...".

IN12 and IN5 also indicated the same concern about different interpretation of Islamic teachings. IN12 stated that *"...as ordinary Afghans we are confused as to accept or reject which interpretations...".* She further added that *"... since we are born we hear that one person is coming and reciting a verse of the Holy Quran and few Ahadith and says that women are mothers and paradise is under the feet of mothers and thus have the highest level of respect...however, another comes and quotes religious scholars and says that if one share anything with women or take their advice, life under the ground (meaning grave) is better for such men than life on the ground (referring to life)...".*

IN5 also has the same concern and states it in a different way: *"... I am confused even now one elite of the defacto authorities in the same ceremony gets up on the stage and says that based on Islamic teachings, education is Farz (compulsory) for both men and women ... at the same ceremony another elite of the defacto authorities stand on the same stage and says there is no evidence based on Islamic teachings that education is Farz on women...".* She further adds *"... you tell me even if I accept the instructions of the current authorities... which one should I accept?...".*

IN10 also shows concerns about multiple interpretations and decontextualization of verses of Holy Quran and Ahadith e Nabawi, and states that *"...I personally do know what to say... see the situation of women is like beard of men... one says the beard is mandatory and should be left to a specific level and others say it is not mandatory... some say women should be provided with employment opportunities based on religious teaching... the others say it is strictly against Islam to let women go to work...".*

IN31, who is a male human rights activist, stated that *"... if personal interests do not drive the motives of many mullahs and religiously influential people, then why don't they preach the inheritance rights of Afghan women... It is common particularly in the southern Afghanistan that Mullahs participate in the discussions of inherited property distributions but do not preach the Islamic right of women in inheritance...".*

The news reports, literature, observations, and interviews for this research all reflect the fact that multiple and even sometimes contradicting or completely different interpretations of Islamic teachings put ordinary Afghans in a state of confusion. Literature also suggests that strictness with respect to these interpretations and lack of flexibility to even listen to other interpretations have further fanned the flames of misconceptions and misinterpretations.

Shallow Understanding and Superficial Religious Interpretations

Besides purposefully and politically biased misinterpretation, another big issue affecting the socio-cultural norms of Afghanistan through religion is the literal and superficial religious interpretations. As indicated in the literature review section, there are several fatwas that have imposed strict restrictions on women. However, as discussed in the interviews, these strict restrictions can rarely be seen in Islamic countries other than Afghanistan.

Even in Pakistan, which, as indicated by IN5 and IN22, is considered the cradle of these strict interpretations, the general situation, status and social norms are completely different. IN22, who is a women's rights activist, stated that "... Like absolute majority of Afghans, I am also a religious person and practice prayers, observe fast and exercise all religious instructions... however, I am also a literate person and can read and see the rest of Islamic world including Egypt which is the host country of Al Azhar.... No Islamic country is like Afghanistan...".

IN10 also exhibits the same concern and argues "...I have seen Dubai which is an Arab Muslim country... I have seen Qatar which even hosted Football world cup... are we better Muslims than them?...". She further adds "... why our religious scholars are only concerned with restricting women in every sphere life...". IN10 also refers to the literal interpretation of a Hadith in Afghan society which is with regards to the cognitive deficiency of women. She says "... With reference to the discussions of Mohammad Muheq, who is a renowned Afghan religious scholar, I believe that beside the authenticity of this Hadith the interpretation is also merely literal...". She adds that "... this kind of literal interpretations give a different meaning to the real Islam...".

IN31, who is a male human rights advocate, also referred to the shallow understanding of religious teachings and stated that "... some people are only concerned about the famous religious leaders and what they say, but the real issue is with mullah's in the small mosques across the country...". He further added that "... these people (mullahs) mostly don't have Islamic knowledge other than five times prayers... but they issue fatwas even on life and death of people...". He further quoted a real-life story which had happened in the Muqur district of Ghazni province in which a conflict was settled through mediation of elders and religious leaders. He stated that "...Finally with mediation of religious elders two women were given in BAD to the victim's family without a Nekah... you know what surprised me... the Jirga started and ended with verses of Holy Quran and the people thought it is the instructions of Islam. Astaghferullah...".

As indicated in the previous sections, there are many examples of literal and superficial interpretation of versus of the Holy Quran and Ahadith Nabawi. These literal interpretations create misconceptions about Islam in the country and lead to new cultural norms which are neither Islamic nor Afghan.

Ideological Politics and Political Expediency

As indicated in the literature review section, in the recent history of Afghanistan, women have been the central focus of different political parties and movements. Be it the left or right wings, they all somehow gave a central role to women in their movements. Some suddenly went to the extremes of modernity in the highly conservative society of Afghanistan, and others went to the extreme of a traditionalism which does not match the requirements of modern era technology and modern world.

As the literature suggests, some movements and politicians have tried to keep a balance between modernity and tradition, which has mostly resulted in conservatism towards women and their rights or ended up in compromising Afghan women in political expediency.

The interviewees also pointed to the effects of different ideologies and political environments around those ideologies on Afghan women. During the study for this paper, it was witnessed that one of the areas where all interviewees are in complete consensus is the adverse effects of politics on Afghan women. The analysis of ideological politics and political expediency in Afghanistan with reference to their effects on women

shows that there are three sub-themes that can reflect implications of politics on women. These sub-themes are elaborated upon further in the following section.

Political Islam: A Tool for Gaining and Maintaining Political Power

As discussed in the literature review section, despite deep-rooted respect for Islam in Afghan society, different politicians have tried to use Islam as a tool to gain and maintain political power. The cry of “Islam is in danger” as a tool to mobilize Afghans for political agendas is a good example of the nourishment of political Islam in Afghanistan.

During the interview session, IN10 stated that “...*use of political Islam as a tool to defeat soviet back regime in Afghanistan, which had a progressive agenda for women, left Afghan women with very complex challenge...*”. She further added that “...*upon victory of Mujahadeen, they had to stick to their fatwas specially about women which were used for political interests... thus they asked for fatwa about women employment and all...*”. She added that “...*the current defector authorities have the same issue an if they reverse their fatwas which were used against the republic... they will face internal challenges...*”.

IN31 also had discussions around political Islam and said “...*As an Afghan and as a Muslim I believe in Islamic politics not in political Islam...*”. In a follow up question to explain the difference, he added that “...*from my perspective political Islam means to use Islam as a tool to gain political power, while Islamic politics means that you consider the great teachings of Islam including the instructions of Islam on leaders’ righteousness while at you are at the peak of political power...*”. He further added that “...*those who are using Islam as a cover for their political gains have posed the worst pain to Afghan women... They will answer to Allah at the day of judgement...*”.

IN7 also referred to the concept of political Islam, though not explicitly, and said “...*All Afghan women are suffering due to those people who claimed that they were good Muslims and have beaten superpowers, but soon as they have started their reign, the first attack has been on women...*”. She further adds that “...*the surprising part is that they claim that women are weak creatures... for god’s sake then how can you exert at most pressure on these weak creatures...*”.

IN5, with reference to the current situation of girls in Afghanistan, also raises this issue and states that “...*the ultimate goal of some claimed Islamic movements is to set on the thrown and then ban schools, universities and even parks on girls and women...*”. She further added that “...*look at me... the whole pressure of the current regime is on my shoulders only... I have been deprived of all my basic rights including access to education...*”.

During this research it was also found that those who came to power using the card of religion are considered the least religious regimes by Afghans. IN31 said that “...*it is not Islam to deny some from her human and Islamic rights... and this denial doesn’t come from left wing regimes or democrats... it come from those who claim the justice of Hazarat e Omar...*”.

As a result, this study shows that denial of rights not only decreases the legitimacy of regimes and creates a huge gap between people and governments, but also contribute to formation of a conception that in the future no Afghan should welcome, trust, or be optimistic about religiously motivated political movements.

Political Expediency by Conservative Politicians

As stated above, in the fight between two extremes of modernism and traditionalism some politicians try to maintain a so-called balance between the two. The literature review and interviews show that while the effort might be for maintaining balance, however, in reality it creates an expedient ecosystem for women rights perpetrators.

During the discussion and interviews IN3, IN5, IN10, IN31, and IN12 all referred to Farkhunda's case as an example of political expediency towards women rights perpetrators. IN3 stated *"...What do you think it was that happened with Farkhunda? And what happened to the perpetrators? Nothing..."*. IN31 said *"...Farkhunda's case which happened in two kilometres radius of the Presidential Palace, is a clear expediency by not only the then president of Afghanistan but by all the politicians..."*.

IN10 did not think it was political expediency and states *"...no punishment to Farkhunda's killers is not conservatism... it is a clear crime and authorities should be prosecuted for this crime..."*. IN12 also refers to this case as a black mark in Afghanistan's modern governance history and says *"...it was clearly nothing but a shame for all politicians and even activists not to forcefully pursue the case of Farkhunda..."*.

IN22 referred to another aspect of political expediency with regards to women and their rights and stated *"... Except the last president and very few politicians, no major male politicians including ex-president managed to symbolically have their wives accompanying them... not even in ceremonies on 8th March..."*. She further added that *"... those who were deep down women rights perpetrators cannot be expected to institutionalize women rights in our country..."*.

The literature also suggests that after the consequences King Amanullah faced after his reform agenda, most of politicians and leaders in the country either explicitly or implicitly followed a conservative and expedient politics with regards to women and their rights in Afghanistan. Furthermore, as discussed in the literature review section, the leaders and politicians, in order to maintain their political alliances (particularly in the rural areas) have knowingly closed their eyes on perpetrators of women rights in the country.

Perpetrators' Impunity and Insufficient Accountability

As discussed in chapter three, particularly in the last two decades, some wonderful progress in the legal sector were made and many pro-women's rights laws were ratified; however, lack of meaningful accountability, besides other factors, limited the implementation of these laws and kept them in a symbolic role. Furthermore, a historical culture of impunity of women rights perpetrators in the country has deepened the concept of male-dominancy in different spheres of life.

With reference to the literature review and the findings of the interviews, the factors affecting the accountability process with regards to women rights, have been categorized in the following two sub-themes namely I) Patriarchal and Misogynistic Tribal Jirgas as an Informal Justice Setup and II) Insufficiency of Coverage of Formal Justice Setups.

Patriarchal and Misogynistic Tribal Jirgas as an Informal Justice Setup

As indicated in the literature study section, there are many legal documents that to an extent guarantee women's rights on paper. However, the practical aspect of these laws and legal instruments has always been very weak. During the interviews for this research, the interviewees pointed to some aspects of the informal legal and justice setups which not only do not fairly help victims, but instead will add further to the complexity of issues mostly by including women as sacrificial goats in the local conflicts.

IN10, in her discussions, had a critical view of the informal justice setups in the country and stated “...*these tribal setups have prevented the formal legal and justice mechanisms to get institutionalized in different parts of Afghanistan...*”. She further added that “...*within these Jirgas you never have a female representation, but every decision somehow affects one or many girls or women who were never involved in the pertaining issues which have resulted in conflicts....*”.

IN33 also critically argued that “...*for god's sake who has allowed them to decide on the fate of people and use the female family member of a so-called offender as a sacrifice goat...*”. She also points to the limited qualification of the elders and/or influential people who have decision making power in these tribal meetings and states “... *I can say it with confidence that within these meetings there is no one who could even define what a right is...they are all those who have gained respect in the society by giving food or other material favours to people around them...*”. IN5, in response to a question about the qualification of Jirga members, said “... *probably in the past that level of qualification was the highest and thus accepted... but now Afghanistan has changed, and everyone knows that they (jirga members) don't know anything...*”.

IN23, beside the disqualification of the members, gives a view about the patriarchal nature of informal justice setups as well and says “...*informal legal and justice setups which mostly exist in the rural areas are patriarchal and male-dominant in nature... since they have been this way all life...*”. Further it was added that “...*although the members (of jirga) might want to rule fairly but neither their nature nor their qualifications allow them to do so...*”.

With regards to the misogynistic nature of actions in these tribal meetings, IN19 states that “...*I have never heard that there was a jirga on a sister's inheritance rights...do u think they are not exercising misogyny?...*”. IN15 also refers to this issue and says that “...*not only the decision makers in tribal meetings (jirgas) are misogynists, perhaps even the families of both conflicting parties are misogynists... if a family accepts to give BAD this means that family is far more misogynist than anyone else...*”.

IN3, with a political lens, describes the informal justice setups and states “...*people who have name and fame in such gatherings and have the ability to sell their credibility which they gain from these setups (jirgas), are actually undermining the central government by not being accountable...*”. She further adds that “... *no doubt that they expect full impunity against whatever they do in response to the support they give the government...*”.

IN22 has a slightly different view than the others and states that “...*there are some problems particularly with regards to treatment of women in these informal justice setups, however, they also help many people in settling their conflicts...*”. IN34 also indicated that these informal justice mechanisms are required at this moment and said “...*until the government is strong enough to have courts everywhere with qualified personnel, there is no other choice but to seek support these informal set ups...*”

From the literature and interviews, it is evident that there is an almost universal consensus that the tribal jirgas, which are operating as informal legal and judicial setups, are misogynistic in nature and in actions. Thus, most of the time they have adverse effects on women and their rights in society. However, there is a strong belief that the very existence of these setups, particularly in the absence of a just and fair formal justice system across the country, is of paramount importance. However, it is being insisted upon that activists and policy makers along with society itself should put their efforts together to bring the required reforms in these setups particularly with regards to women and their rights.

Insufficiency of Coverage of Formal Justice Setups

As stated in the last section, informal justice system mostly exists in places where formal justice setups do not exist. Furthermore, literature also suggests that mostly in rural areas where even formal justice setups exist, their coverage have not been sufficient.

During the interviews all the interviewees unequivocally stated the insufficiency of justice setups in the country and its implications on the Afghan women and their rights. As stated in the former section, IN34 indicated the insufficiency of formal justice systems and further added “...if there are sufficient courts everywhere in Afghanistan, obviously, that will positively affect women and their rights because the staff of courts know laws and rights...”.

IN5, with a critical view of the former government, stated that “... Billions of dollars were spent in Afghanistan, but we even couldn’t establish an all-Afghanistan inclusive justice system...”. IN10, with same nature of assertion, stated that “...Government could create a networked justice system and use technology to cover more areas with less resources and keep track of what was going on with women everywhere in the country...”. In response to a follow up question on how networked justice system could help in terms of women rights assurance, she stated that “...if courts are connected to each other, central monitoring can be ensured and thus all courts will have to abide by the law and no one can help women rights perpetrators...”. She further added that “...justice personnel will also be able to learn from each other and share experience which will help the capacity gap...and this will not cost much... but only if proper plans are in place for it to happen...”.

IN26, with a qualitative view on the coverage of the formal justice system, stated that “...I believe that if formal justice system were fair and just, people from even remote areas of Afghanistan would make a way to get these setups near them... but the issue was and is that there is not trust on formal systems...”. IN19 also criticized the accountability and transparency of the formal justice mechanisms and stated “...women would become victim of harassments if they would go to courts and Attorney General’s office... that is why people particularly in rural Afghanistan would never want to have courts...”.

IN32 insisted on the importance of the formal justice setups across Afghanistan; however, she questioned the feasibility of that and stated “...No doubt that we need that (formal justice setups) everywhere in Afghanistan, but it is not possible with the current economic situation and capacity deficiency in the country... it will take long time to achieve that...”. She further added that “... I have no doubt that women will suffer for long time if the justice system of Afghanistan is not expanded and does not become accountable particularly with regards to women...”.

An interesting point was raised by IN24 with regards to the purposeful weakening of the formal justice system in the last two decades in Afghanistan. IN24, who is a female politician stated that “...the problem

was the international community expected from war lords and perpetrators of human rights accused of even war crimes to implement justice and respect women rights... she laughingly said even a child can understand that this is a paradoxical expectation and will never happen...". She further added that "...all warlords who were ministers and governors and in senior political and military positions were implicitly and explicitly blocking the expansion of formal justice setups..."

As discussed above, be it the lack of capacity of government or reluctance of warlords, be it the corruption institutionalized in the formal justice system or paradoxical expectations by the international community; the effect of insufficiency of formal justice system and setups across Afghanistan adversely affected women and their rights. Despite a gilded age in the country, particularly in the past two decades, the optimum utilization of the opportunities to sustainably lift up women and their rights within the Afghan society could not be ensured.

The Vicious Cyclic Pattern of Women Rights Violations in Afghanistan

The discussions above and the literature review section reflect the fact that violations of women's rights in Afghanistan has a devastating pattern. It expands in different ways in moods in terms of coverage. Furthermore, it deepens by the passage of time. The negative implications of this process not only undermine the ecosystem around women, but they also destroy the social fabric of Afghanistan.

During the study, two different patterns which exacerbate the brutality of violations of women's human rights were noticed. These two patterns are elaborated upon in the below section.

Circular Viciousness of Women Rights Violations

The literature review and conclusion of interviews indicate that sometimes a causality relationship can be witnessed among different themes pertaining to women's rights violations in Afghanistan.

Upon deeper analysis of this relationship a pattern was noticed between socio-cultural norms and religious misinterpretations. To exemplify a scenario, a reference can be made to norms such as strict restrictions on women's education or employment which mainly stem from socio-cultural norms, amplified by religious misinterpretations. For example, such strict religious interpretation was given to issues of women's employment and education by religiously influential people in King Amanullah's period. Once these norms earn religious cover, a phase of fighting between modernists and traditionalists occurs. Such fights have mostly been through ideological politics such constitutional monarchs and absolute monarchs or right-wing Islamist and left-wing socialist or republicans and TBN. Within these fights women pay the ultimate cost by losing their dignity and rights from time to time.

In between these times, conservative politicians, in an effort to maintain their power, try to keep both modernists and traditionalists happy. They may take small steps towards institutionalization of women's rights in the country; however, most of the times these steps are symbolic and superficial. Furthermore, besides superficial reforms they make decisions which will take back Afghan women back to the stone age.

A good example of such superficial reforms can be the paper based and media-based claims of institutionalizing women's rights to education, political representation and appointment to leadership positions, and dealing them all for nothing with those who do not believe in human rights let alone women's

rights. Furthermore, these conservative politicians, with the cover of so-called balanced politics, usually exercise negative political expediency. These expediencies are usually in the form of impunity to women's rights perpetrators.

The impunity to perpetrators and lack of keeping them accountable before a formal justice system adds to a general perception that violation of women's rights is a normal practice. A normalized practice is then established that does not believe when women's rights have been violated. For example, currently for most of the de facto elites, a ban on women's employment and education is a normal practice and they do not even feel that a violation has happened. Such a mindset becomes a cultural norm, and the process restarts where such norms undergo religious interpretations, moving in the same circular direction as depicted in Figure 2.



Figure 2: Circular Viciousness of Women Rights Violations in Afghanistan

Thus, a cyclic pattern is established between the four elements comprising the cycle. Each circulation further exacerbates the violations of women's rights in Afghanistan which adds to the viciousness. The cycle follows a perpetual pattern and never ends if not intervened in with a well-thought-out strategy. Furthermore, it is worth accentuating that within this cyclic interplay of the four comprising elements, small cycles between each of the two elements also occur. This further adds to the complexity of this viciousness.

To conclude, the researcher has named this cyclic pattern the Circular Viciousness of Women's Rights Violations. This should be considered a dangerous, complex and devastating cycle which needs to be addressed with well-designed short-term, medium-term, and long-term programs.

Vertical Viciousness of Women Rights Violations

The second pattern which was noticed during the analysis of literature and findings of interviews, relates to the continuous deepening of the roots of women's rights violations.

The study shows that each occurrence of women's rights violations further consolidates the roots of a violent ecosystem and paves the way further for perpetuity of violations.

To exemplify the scenario, the case of ban on modern education of Afghan girls can be considered. As discussed in different literature and reflected in the literature review section, despite full approval of girls' education by an Islamic monarchy during King Amanullah Khan's reign, the modern education was purposefully not welcomed by some finger counted influential religious leaders. Upon the collapse of King Amanullah's reign and the enthroning of Habibullah Kalakani, the schools were banned for girls. The implications of the ban which was accepted as a decree of the Amir expanded and deepened particularly in the rural areas of Afghanistan.

After a gradual positive change for women which took many years, once again when the Mujaheddin came to power, education and employment for women and girls were banned again. This time the implications and adverse effects were even more than the last time. As literature and findings suggest, this ban also had a historical justification from the past, and thus was more consolidated.

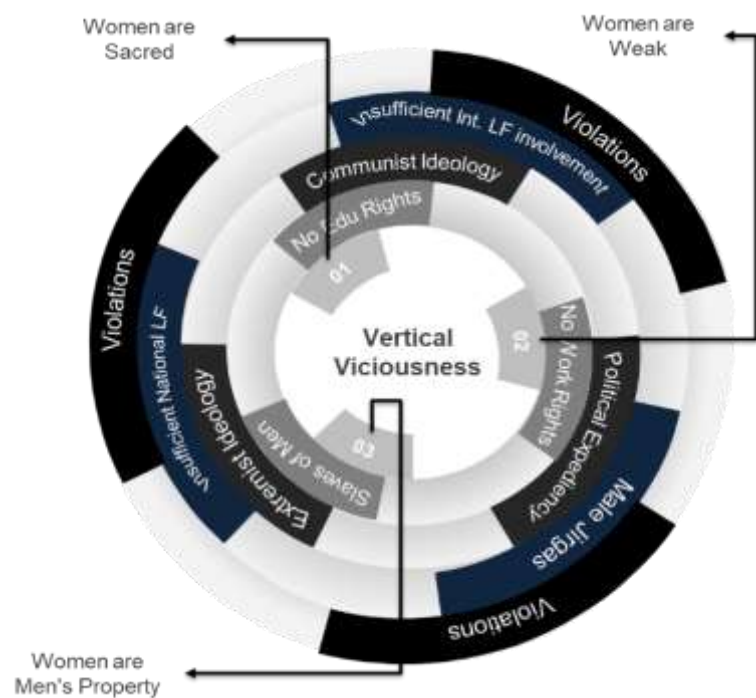


Figure 3: Vertical Viciousness of Women Rights Violations in Afghanistan



Figure 4: Example of Vertical Viciousness of Women Rights Violations in Afghanistan

When TBN took over in the 90s, they explicitly brought religious justification against women education in schools and employments. Some studies referred to in the literature review section implied that even people who had previously been pro-girls' education were confused and thought they might have gone wrong. Upon TBN regaining power in 2021 and the subsequent ban on girls' education, even neighbouring countries shouted that culturally Afghanistan was not friendly towards educating girls and everyone should respect Afghan culture.

Thus, as depicted in figure 4, the more a violation of women's rights occur in Afghanistan, the deeper its roots get. Therefore, such violations become part of the socio-cultural norm and are consolidated by the passage of time. Once the norm is consolidated, it becomes difficult and complex to root it out and replace it with new norms.

Conclusion and Recommendations

Conclusion

In conclusion, this research comprehensively outlines the grave and multifaceted challenges faced by Afghan women due to prolonged conflict, societal norms, and political instability. The paper effectively highlights the two different vicious cycles of women's rights violations in Afghanistan, namely circular vicious cycle and vertical vicious cycle. The factors contributing to the formation of these two perpetual cycles are deeply entrenched in a patriarchal society, religious misinterpretations, political expedience, and lack of accountability. The paper sheds light on the insufficient accountability and pervasive impunity for violators, significantly contributing to the ongoing suppression and victimization of women in Afghanistan.

In light of the comprehensive analysis provided, it is evident that the struggle for women's rights in Afghanistan is not merely a legal or political issue but deeply entrenched in a complex web of socio-cultural, religious, and economic factors. The journey from understanding women beyond their biological definitions to recognizing their inherent human rights, as outlined by scholars like Martin, Lorber, and institutions such as the United Nations, underscores the necessity of a multifaceted approach to addressing gender-based violence and discrimination. Afghanistan despite being a member state to UN and ratifying most of the international law treaties including CEDAW: which on their February 2024 Concluding observations on the seventh periodic report of Tajikistan highlighted “the progressive and deliberate restrictions on women and girl’s rights since the Taliban takeover in 2021 and the related violations of their human rights have been institutionalised by the de facto authorities through edicts, policies and practices.it has resulted In the marginalisation and exclusion of women and girls in all their diversity from social, political, public and economic life. These actions may amount to gender persecution, which is recognized as a crime against humanity in the Rome Statue of the International Criminal Court. Those responsible should be held accountable.”¹³⁵ But in practice the reality for Afghan women, as highlighted by the UN special rapporteur, CEDAW and UNAMA reports remains grim and requires sustained international and local action.

To move forward, it is critical that interventions not only aim to dismantle the systemic structures that perpetuate gender persecution but also foster a cultural shift towards gender equality. This requires a collaborative effort that includes equal and responsive resource distribution and gender sensitive approaches that can address the specific and unique needs of every group of women considering Afghanistan unique context and diverse society. Including those living in rural areas with a poor economic situation, those in urban areas with a more complex set of requirements, women related to religious and ethnic minorities such as Hazaras and Shia women, women with disabilities, Nomad/Kochi women, and the LGBTQI. Moreover, the international community must continue to support Afghanistan in the formation of a government that is inclusive, responsive, accountable and able to address the needs of its people and would create a society that can eradicate the clichés, stereotypes and the socio-cultural norms that are facilitating the continuation of gender-based violence with full impunity. In essence, the fight for women's rights in Afghanistan is a testament to the broader global struggle for equality and justice. It serves as a reminder that women's rights are human rights, and that the denial of these rights anywhere is a threat to human dignity everywhere. The path towards gender equality in Afghanistan is filled with deep social, cultural, economic, political and legal

¹³⁵ <https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/activities/Gender-persecution-womens-human-rights-in-Afghanistan.docx>

challenges, but it is a journey that must be undertaken with resilience, solidarity, and a steadfast commitment to upholding the dignity and rights of all women.

Perspective

The gender analysis presented in this research paper provides a critical foundation for understanding the complexities of gender inequality in Afghanistan. By shedding light on the multifaceted oppression and misogyny faced by Afghan women historically. And delving into the socio-cultural, religious, and political dimensions that perpetuate gender discrimination. This nuanced approach underscores the importance of considering various intersecting factors that contribute to the marginalization of Afghan women, offering insights into the persuasive nature of gender-based violence and the institutional barriers threatening the life, freedom and rights of women in Afghanistan.

Looking forward, it is important to expand the scope of gender analysis in Afghanistan to include the intersections of gender with economic conditions, ethnic and religious minority status and geographic challenges. Therefore, there is a need for further unpacking of how the poor economic situation and dire humanitarian crisis disproportionately impact Afghan women, particularly in how they navigate access to the resources. Additionally, an in-depth examination and analysis of the experiences of ethnic and religious minorities, such as Hazara and Shia women, will uncover specific vulnerabilities and forms of discrimination they face. Analyses should also differentiate between the experiences of women in urban versus rural settings, as well as those of nomadic women who are also considered as one of the most vulnerable groups and members of the LGBTQI community, to fully understand the breadth of gender inequality. A deeper thematic gender analysis will not only enrich our understanding of the nuanced challenges faced by different groups of women and gender minorities in Afghanistan but also inform targeted interventions and policies to address their unique needs and promote gender equity.

Policy Recommendations

For the International Community and U.N. member states

- Support the formation of an inclusive government that is inclusive, responsive, accountable and able to address the needs of its people and would create a society that can eradicate the clichés, stereotypes and the socio-cultural norms that are facilitating the continuation of gender-based violence with full impunity. Any socio-structure or thematic change in relation to women rights, without a responsive and accountable government would be impossible to envision.
- Upholding the Taliban accountable and conditioning their recognition to the eradication of the systematic bans on the basic and fundamental rights of Afghan women, including access to formal education, employment, and freedom of movement. That is not only a legal obligation of the U.N member states but a moral duty to fight against the cruel and systematic deprivation of Afghan women, who were nurtured with a belief that respecting human rights, access to justice and living a dignified life was the reason for an international invasion in their country. These women have already lost so much in the last 50 years of war and regime changes in Afghanistan.

- Assess the capacity of UNAMA to support victims of women's rights violations under the de facto authorities, meticulously document these violations, and continue to protect and promote the rights of Afghan women by addressing the socio-cultural and religious norms outlined in this report.
- Accelerate the ICC's investigations in Afghanistan and actively pursue bringing perpetrators to justice.
- Support the legitimate demand and pledge of the Afghan women for the establishment of an independent, impartial and inclusive accountability mechanism that can hold the perpetrators accountable and deliver justice to them.

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