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Restriction of Civic Space in Afghanistan Under the Taliban- From Religious Ideas to Actions

**Restrictions on the Rights to Freedom of Assembly,
Association, and Expression**

**M. Abul Ahrar Ramizpoor, RWI Research Fellow
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Restriction of Civic Space in Afghanistan Under the Taliban

From Religious Ideas to Actions

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Author: M. Abul Ahrar Ramizpoor

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Abbreviations, and Acronym

CSOs	Civil Society Organizations
HRDs	Human Rights Defenders
INGO	International Non-Governmental Organizations
NGO	Non-Governmental Organization
RWI Law	Raoul Wallenberg Institute of Human Rights and Humanitarian
UK	United Kingdom
US	United States
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
WHRDs	Women Human Rights Defender
OIC	Organization of the Islamic Conference
AGO	Attorney General Office
PD	Police District

Executive Summary

For two decades prior to the Taliban's return to power on August 15, 2021, the Afghan people enjoyed a relatively suitable and lawful civic space. During this period, there was freedom of the media, the establishment of civil society associations, and the initiation of strikes, protests, and critical discussions all supported by existing laws. Despite challenges and a deteriorating security situation, civic activities persisted until the fall of Kabul. However, after regaining power, the Taliban revoked the laws of the former government and declared the application of Islamic Sharia to all aspects of life. Subsequently, they imposed increasing restrictions on civil, political, social, and media activities.

The Taliban's ideological and political foundation plays a significant role in shaping the structure of their governing system and guiding their actions to limit civic space. The Taliban's ideological views stem from their restrictive interpretations of Islamic Sharia. These views were not only acquired through learning in Deobandi Madrasas in Pakistan but were also documented and published in the form of a 312-page book titled "Islamic Emirate and its System" in 2022. The author, Sheikh Abdul Hakeem Haqqani, is the current de facto Chief of Justice of Afghanistan.

The stringent policies of the Taliban over the last two years, particularly concerning women's rights, freedom of expression, civic activities, peaceful assemblies, and the persecution of women, human rights defenders, and former government employees, have resulted in a lack of official recognition by any country. This reluctance extends even to Islamic states. Additionally, the discriminatory treatment of individuals by the Taliban and their negative stance towards art, music, cultural values, and the rights of minorities are additional factors contributing to the international hesitancy to formally recognize the Taliban government.

Research Problem Statement

The nature of the Taliban's Islamic rule in the past two years has led to a severe deterioration in the situation of freedom of expression and access to information. The rights to peaceful assembly and the formation of civil assemblies and associations have been stripped from the people, resulting in the fleeing of human rights defenders and civil society activists from Afghanistan. The continuity of such a situation raises the question of whether Islam truly does not endorse issues such as freedom of expression, the right to peaceful assembly, and the

establishment of associations. Given that the experience of civilized societies shows that having a conducive civic space strengthens the rule of law and leads to societal reforms, examining this issue from the perspective of Islamic teachings, national laws and traditions, and international human rights documents can shed further light. The ongoing restricted civic space under the Taliban rule motivated me, as a researcher, to conduct this study in collaboration with the Raoul Wallenberg Institute at Lund University in Sweden. This research was carried out under the supervision of Professor Dr. Morten Koch Andersen and Mr. Richard Bennett, the special rapporteur of the United Nations Human Rights Council for the human rights situation in Afghanistan.

Over the past two years, the Taliban leader has issued numerous decrees, instructions, and edicts to advance their restrictive policies. These official documents have been recently published in the official gazette. By studying and analyzing the book "Islamic Emirate and its System" along with the decrees and edicts issued by the Taliban leader, and by examining the perspectives of religious experts, human rights defenders, and civil and media activists, this research aims to provide an academic and impartial understanding of the Taliban's approaches and actions in limiting civic space after the fall of the former government.

Research Questions

The main question in this research is:

How have the religious thoughts and actions of the Taliban impacted the restriction of civic space in Afghanistan?

For each of the four main topics, two additional subsidiary questions have also been raised as follows:

1- Is the Islamic governing system as described in the book "Islamic Emirate and its System" adaptable to contemporary governance systems?

2- What is the ideological approach of the book "Islamic Emirate and its System" regarding the elements of civic space (freedom of expression, association, and assembly)?

3- To what extent are the decrees, edicts, and instructions of the Taliban leader influenced by the thoughts presented in the book "Islamic Emirate and its System"?

4- What is the approach of the decrees, edicts, and instructions of the Taliban leader regarding civil society and the civil space?

5- What is the background and position of civil society and civic space in Afghanistan in light of religious values, human rights commitments, national laws, and Afghan culture?

6- What is the status of freedom of expression, the right to establish associations, and the launch of peaceful gatherings under Taliban rule?

7- What is the viewpoint of Islamic scholars, human rights defenders, civil activists, and the media regarding civil society and civic space under Taliban rule?

8- Does the Taliban's treatment of civil society and the components of civic space align with the true Islamic teachings according to the perspectives of civil activists, human rights defenders, media members, and Islamic scholars?

Purpose of the Research

1. To study the ideology and thoughts stated in “The Islamic Emirate and its System” book regarding political structure and restriction to civic space in post-republic Afghanistan.
2. To understand the relation between the ideology stated in the book, decrees and edicts, and the actions of the Taliban.
3. To figure out the clarification of the position of civic activities in Islamic Sharia and the reason for the Taliban's opposition to it.
4. To examine the imposed restrictions by the Taliban on each right and freedom for civic space.
5. To compare the role of legal, and civic space in the past, present, and future.
6. To explore the right to the establishment of peaceful assemblies, peaceful associations, and freedom of expression under Islamic Sharia, national and international laws, and Afghan culture and traditions.

It is worth mentioning that during the final part of the research, a series of interviews and group discussions were conducted with Afghan academics and civil figures, including Islamic scholars, human rights defenders, and media and civil activists residing both inside and outside Afghanistan. These individuals are in countries such as the USA, The UK, Canada, Germany, France, Turkey, Pakistan, and Tajikistan. This research is grounded in the insights provided by the interviewees and the findings derived from library research, constituting a qualitative study.

The findings of this research reveal that the fundamental ideology of the Taliban governance system, as outlined in the “Islamic Emirate and its System” book, traces its roots back to Islamic political jurisprudence articulated by scholars from the eighth century AD onward. These ideas,

characterized by their antiquity and lack of evolution, have been documented and persisted unchanged throughout history.

One of the key distinctions in terms of applicability between previous ideas of Islamic jurisprudence and the Taliban's ideology is that while previous Islamic Jurisprudence remained only in the pages of books, the Taliban applied the practical example of an Islamic governance system within the specific geographic context of Afghanistan. Furthermore, based on the commitments made by the Taliban to the United States of America in the 2020 Doha Peace Agreement, they pledged not to allow any radical terrorist group to operate from Afghanistan's soil. However, there are reports of the existence of other radical Islamic groups inside Afghanistan, posing potential threats to security and civil and human rights values in Afghanistan and other parts of the world.

Through research and interviews with Islamic scholars and civil activists, it became evident that the restrictions imposed by the Taliban's de facto government on freedom of speech, freedom of assembly, and associations result from their policies and have no basis in Islamic principles.

Introduction

Civic space is a relatively new term introduced into the social glossary over the past two decades in Afghanistan. However, the rights and freedoms that underpin civic space have a more extensive history, rooted in philosophical and international human rights perspectives. Key components of civic space include the right to establish associations, the right to peaceful assembly, and the right to freedom of expression. In general, the actors of civic space are individuals or groups, whether through civil or political associations, unions, foundations, organizations, media, political parties, or similar institutions, who actively work to enhance life and advance societal development. Civic space needs political, legal, physical, and intellectual support.

Nevertheless, in democratic societies, the parameters of civic space are governed by both national laws and international human rights commitments. Today, UN human rights documents and mechanisms are familiar to all countries. However, in non-democratic countries, especially those with authoritarian governments, including many Islamic countries, people often face challenges in accessing civic space due to factors such as a lack of legal and political support, the presence of despotic leadership, or the influence of active traditional and radical religious groups in power.

The developments in civic space and civic activities over the last two decades in Afghanistan have played a crucial role in raising awareness of human rights and civil liberties among the people. Afghan citizens have come to acknowledge the existence and importance of civil society in their social life. Despite increasing restrictions on civic space and the departure of the majority of civil, media, and human rights activists in the last two years, the Taliban has not been able to change the public mindset on this matter. Remarkably, there are still numerous civil society organizations, media outlets, and human rights advocates inside the country. Despite the Taliban's ban on critical discussions, protests, and peaceful gatherings against their rule, calling it opposite to Sharia law, civil, media, and human rights activists persist in documenting human rights violations and undertaking innovative advocacy efforts as much as possible.

Following the Doha deal on February 29, 2020 between the Taliban and the U.S. government, unsuccessful peace talks, and the military advances of the Taliban, the government of the Islamic Republic of Afghanistan eventually collapsed in August 2021. The Taliban regained power and reinstated the name of their 1996 government, known as the Islamic Emirate of

Afghanistan. Subsequently, the Taliban revoked the laws of the former government and declared the application of Islamic Sharia.¹

From a general perspective, the Taliban's interpretation of the implementation of Islamic Sharia involved the nullification of all laws, structures, and developments established during the twenty years of the republic government. These advancements were the result of collaboration and efforts by the international community and active participation of the Afghan people. Since the Taliban's takeover in Kabul, all democratic achievements in Afghanistan have encountered restrictions and challenges, and this trend persists today.

With the commencement of the evacuation of foreign forces and their Afghan colleagues from Kabul airport on August 15, hundreds of civil society, human rights, and media members, who had memories of security threats and the Taliban's history of killing civil activists in the past two decades, were compelled to flee the country out of fear for their lives. Over the last two years, civil society members, human rights advocates, and media activists have been leaving, and those who persist in their work encounter various challenges.

Considering the above explanations, it is evident that the current status of civil space in Afghanistan needs to be studied from various angles and using scientific methods.

Research Method

To explore the development of civic space under Taliban rule and answer the research question, I undertook the following examinations of qualitative academic research methodology.

This research utilized various methods for data collection, following a qualitative research approach that relies on interviews, observations, and research activities to obtain detailed and accurate information on the state of civil space under Taliban rule. It involved analyzing the book "Islamic Emirate and its System," studying decrees of the Taliban leader, examining the background and role of civil society, and engaging in discussions with Afghan HRDs, CSAs, and academics. The following methodologies were employed:

1. **Library Research:** This involved an extensive review of books, articles, and published reports focused on topics such as the Islamic governance system, violations of human rights by the Taliban over the past two years in Afghanistan, and the status of civic activities and space under the Taliban.
2. **Observation and Multimedia Analysis:** Video reports and interviews were observed and analyzed to comprehend the policies and actions of the Taliban concerning civic space during the preceding two years.

¹ United Nations Assistance Mission in Afghanistan. (2023). Corporal punishment and the death penalty in Afghanistan. UNAMA. <https://unama.unmissions.org/corporal-punishment-and-death-penalty-afghanistan>

3. **Interviews:** Individual and group interviews were conducted, employing open questionnaires and supplementary interviews. These discussions involved Islamic scholars, well-known media personalities, and civic activists, both within and outside Afghanistan.

Data Analysis Method

In this research, comparative and explanatory research method has been employed to analyze the data accurately. The selection of interviewees was based on the Judgmental Sampling method.

The research is divided into four parts:

1. **Exploration of the Book “Islamic Emirate and its System”:** This part delves into the book written by Sheikh Abdul Hakeem Haqqani.
2. **Examination of decrees, instructions, and edicts issued by the Taliban’s leader:** This part explores the published decrees, edicts, and instructions of the Taliban’s leader, aiming to identify and assess those that impact the restriction of civic space in Afghanistan.
3. **Examination of Civil Society and Civic Space in Afghanistan:** The third part explores the concepts and components of civil society and civic space in Afghanistan. This examination is grounded in national and international human rights laws, Islamic Sharia, and Afghanistan's culture.
4. **Analysis of Interviews:** The fourth part discusses the conclusions drawn from interviews conducted with 22 Islamic scholars, human rights activists, and media personalities, both residing inside and outside Afghanistan in exile. The findings of this research not only describe the current situation but also reflect the perspectives of experts on the causes and reasons for limiting Afghanistan's fragile civic space after the fall of the former government.

In the concluding section, the research provides recommendations for national and international actors and relevant stakeholders. These recommendations aim to assist the Afghan people in the partial restoration of a peaceful civic space for the realization of human rights and social justice.

Part One:

Introduction to the Book “Islamic Emirate and its System”

Ideological and stringent religious views, enforced on people by military, political, or radical groups through coercion and pressure, often result in the deprivation of civil and political rights and liberties. This imposition poses significant challenges to the progress of society.

By examining the state of civic space in post-republican Afghanistan, we encounter a compilation of religious governance ideas presented in a book authored by Sheikh Abdul Hakeem Haqqani. He is a prominent Taliban scholar, a graduate of the Deobandi Haqqania Madrasas in Pakistan, and currently serves as the Chief of Justice in the de facto government. This book provides insights into the mindset of a traditionalist and conservative religious scholar who has outlined the structure and goals of an Islamic governance system, named the Islamic Emirate of Afghanistan. The framework is drawn from the books and classic Islamic texts of Hanafi jurisprudence. This book is significant for studying the Taliban's system, as it is endorsed by the Taliban's leader, who has also contributed an introduction to the book.

After regaining power on August 15, 2021, the Taliban revoked the laws of the former government, including the constitution, and have not introduced any legal solution outlining the structure of the system for the Afghan people and the international community. They imposed increasing restrictions on civil, political, and media activities. With the absence of a credible national legal document, such as a constitution, "The Islamic Emirate and Its System" book can be considered the only written document discussing the structure and system of the Islamic Emirate. The study and analysis of this book indicate that the actions undertaken by the Taliban's de facto regime over the past two years, restricting women, media, civic freedoms, religious and ethnic minorities' rights, and addressing political and cultural issues of the Afghan people, are based on the ideas stated in this book.

A Glance at the Author of “Islamic Emirate and its System”

The author of the book “Islamic Emirate and its System” is Sheikh Abdul Hakim Haqqani, born in 1956 into the Ishaqzai tribe of Panjwayi District in Kandahar province. Raised in a

religious family, he received his primary religious education from his father. In 1977, he joined a Madrasa in Akora Khattak, Khyber Pakhtunkhwa province of Pakistan, completing his higher religious education in 1980.

Over the years, Sheikh Abdul Hakim Haqqani has been involved in teaching, with stints at Madrasas in Balochistan province of Pakistan, including Madrasa Tadrees Ul-Quran, Mazahir Al-Uloom, and Noorul Madaris, as well as schools in Helmand and Kandahar Provinces. After 2001, he immigrated to Pakistan, where he established a Madrasa named Darul Uloom al-Sharia in 2003 in Ishaqabad, Quetta. He served as its teacher for 14 years and concurrently held the position of chief of the Taliban courts.

Throughout his career, Sheikh Abdul Hakim Haqqani authored about 27 booklets and books on various religious issues, including Hadith, the Life of Prophet Mohammad, the Islamic Judicial System, Etiquettes of Eating and Drinking, Etiquettes of Traveling, Rules of Prison, Islamic History, Jihad, and other jurisprudential matters.²

Unlike traditional academic writing, the book “Islamic Emirate and its System” does not follow the conventional structure of being divided into separate and related parts. Instead, it presents a series of topics, one after the other, deemed relevant to the Islamic governance system. It stands out from books written in previous centuries on the Islamic governance system by addressing various issues, including discussions about women, modern education, and denunciation of the democratic system.

The book commences by introducing Mullah Hibatullah, the leader of the Taliban, and another individual named Ammar al-Madani. Following this, the author's biography is presented by Abdul Ghani Maiwandi. Subsequently, the author provides a brief introduction to the book, emphasizing the observance of Islamic law and the necessity of continuing Jihad for the preservation of religion. Within this concise introduction, the author directs a message to the Taliban fighters, urging them not to remain idle after the departure of the Americans. Instead, their objective should be to implement the law of God over the servants of God (the people of Afghanistan) under the banner of Islamic Sharia. Achieving this grand goal requires the establishment of an Islamic state in Afghanistan and the appointment of an Imam as the head of the Islamic state. This Imam should serve the interests of the people, enforce decrees, arrange marriages for orphans, cease hostilities, implement Sharia rulings, collect Zakat and Alms, distribute war booty, and manage the treasury, among other responsibilities.

² Ishaqzai, A. H. (2022. P.10). The Islamic Emirate and its system: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia.

The Main Topics of the Book “Islamic Emirate and its System”

Division of Governments

The initial focus of the book explores the various types of government. The author categorizes governments into two types. The first type, termed the government of "Al-Jabayeh", with a motto of the levy, operates on a system that thrives on luxury, imposing excessive taxes on the people, indulging in high amounts of imports, luxury, and entertainment for government officials. This comes at the expense of exploiting the poor and neglecting religious principles. The second type, known as the government of "Al-Hedayeh" with a motto of guidance, centers on calling people to God, promoting virtuous conduct, discouraging evil, fostering abstinence, finding contentment in life, and avoiding sinful behaviors.

From the author's perspective, the government of guidance distances itself from corruption, bribery, arrogance, coercion, and hypocrisy. Despite potentially challenging conditions, such as poverty and financial constraints, this type of government encourages people to avoid sin and engage in self-cultivation. The author contends that in today's world, governments with a motto of guidance are rare, or even nonexistent. Most governments, in his view, align with the type of Al-Jabayah.

Key components of the government with a motto of guidance, as per the author, include being led by an Amir, an independent judicial system, a robust Islamic army, and the implementation of divine law. The author asserts that Taliban fighters have demonstrated the possibility of implementing Sharia law and Islamic principles, contributing to the revival of Muslim greatness in Afghanistan. He argues that following imported solutions has not spurred progress but has, instead, led to the stagnation of Islamic societies.³

Sharia and State Laws

In the context of upholding Sharia laws, the author aims to explain the supremacy of Sharia as a legislative source, delving into the relationship between an individual and God, as well as the individual and society. The narrative asserts that the implementation of Islamic Sharia is the primary goal of the Taliban's Jihad (struggle) and represents the exclusive means to safeguard Afghan society. Additionally, the author cites reasons from the Qur'an, the Sunnah, and the consensus of Islamic Mujtahids to invalidate existing statutory laws on this subject. These reasons collectively argue that the Qur'an and the Sunnah are sufficient sources of Sharia for managing the affairs of Islamic society, rendering statutory laws unnecessary. The author contends that the absolute sovereignty of the world belongs to God, emphasizing that

³ Ishaqzai, A. H. (2022. P.10). The Islamic Emirate and its system: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia

individuals hold no authority or role in this sovereignty. Consequently, the author insists that Allah's rulings (Sharia) must be implemented. In this context, the conditions for following the Imam or the head of the Islamic State are outlined, asserting that people are obligated to follow the Amir as long as he adheres to the rules of Islam.

Components of the Islamic Government

As outlined in the book "The Islamic Emirate and its System," the Islamic government is structured around the following six components:

1. The Head of the State (Caliph or Amir)
2. Government Mechanism: This should operate without nepotism.
3. Civil Laws: These are based on Islamic principles and public interests.
4. Independent Judicial System: This system must be free from the influence of any authority, including the head of the state or other individuals.
5. A Solid Military Force: This force is tasked with supporting independence both inside and outside of the country.
6. Officers of Propagation of Virtue and Prevention of Vice: This group works to implement laws for the interests of the people and to eliminate harassment among individuals.

Three Main Scopes of Power of the Islamic Governance System

The author explores the core components of the Islamic Governance System, delineating it into three main branches: Islamic legislation, executive, and judicial. Within this framework, the author emphasizes the holiness of the legislative branch, positing that its authority is exclusively vested in God and His Prophet, the sole authors of Sharia laws. The author further explains the role of Mujtahids and Islamic scholars within the structured framework of the Islamic Council (Shura). Stressing the importance of a constitutional system to regulate government affairs, the author contends that such a framework is crucial for explaining the method and essential elements of power within the governance system. After a thorough examination of various scholarly perspectives, the author firmly underscores the opinion that Islamic Sharia stands as the singular source uniquely qualified to fulfill this essential role.

Turning to the executive branch, the author asserts that the Imam, prime minister, ministers, and other government officials bear the responsibility for implementing Sharia laws and orders across social, economic, and political spheres. The author further classifies ministers into enforcement and delegated categories, with the Ministry of Delegated possessing greater authority and freedom of action alike the prime minister. In contrast, the Ministry of Enforcement is tasked solely with implementing the orders and decisions of the Imam. Designating the Ministries of Defense, Economy, and Interior as essential, the author

underscores the importance of an independent judicial system, providing detailed explanations rooted in Islamic history. The book, "Islamic Emirate and its System," asserts that the judiciary is a wholly religious institution, tracing its origins to the Prophet and the early caliphs. Moreover, the author discusses the judicial system in different periods of Islam until the Ottoman Empire; he considers issuing rulings in the Afghan judicial system exclusive to the Hanafi school of thought.

Sources of Islamic Legislation

The book "Islamic Emirate and its System" outlines the sources of legislation as follows:

1. The Holy Qur'an: This sacred text contains theological, moral, and practical rules, addressing worship, personal status, civil rights, criminal rules, mandatory rulings related to the governance system, inter-state rulings on relations between Muslims and non-Muslims in war and peace, as well as economic and financial rulings.
2. Sunnah: Comprising the sayings, actions, or teachings of the Prophet of Islam.
3. Ijma (Consensus): Agreement among Islamic Mujtahids on a subject.
4. Qiyas (Analogy): Modification of the ruling of an issue not explicitly covered in the text with an issue whose rule is mentioned due to a common cause.
5. Istihsan: Consideration of issues considered good among people.
6. Masalih al-Mursala (Considerations of Public Interests): Interests without specific mention in Sharia but arising out of necessity, such as the creation of coins and prisons.
7. Urf or Custom: Practices accepted by common sense and repeated over time.
8. Istishab al-Hal: Ruling on something that continued in the past because there is no reason for its dissolution.
9. Sharaia Man Qablana: Laws revealed to previous prophets from God.
10. Sayings and Actions of the Companions of the Prophet.

The foundational sources include the Qur'an, Sunnah, Ijma, and Qiyas, with other sources falling under each of these fundamental categories, as outlined in the principles of jurisprudence.

School of Thought (Madhhab)

A school of thought, or Madhhab, is a methodology developed by Mujtahids for deriving rulings from Sharia sources, in use since the early part of the second Islamic century. Among Sunni Muslims, four prominent schools of thought are recognized: Hanafi, Shafi'i, Hanbali, and Maliki. After a vibrant period of Islamic legislation during the Mongol invasion of Islamic

lands, Islamic Mujtahids collectively decided to suspend the continuation of Ijtihad as a precautionary measure.⁴

The following of the Hanafi school of thought by the people of Afghanistan is another topic mentioned under the title of the (Madhhab) school of thought in this book. In this section, it is stated that an Islamic state must follow a specific school of thought that the majority of people follow. He has argued that because the courts of Afghanistan have been based on the Hanafi school of thought since ancient times, the majority of the Afghan people also follow the Hanafi school of thought. On the other hand, the texts, books, and fatwas of the Hanafi school of thought are common in this country, and people consider following another school of thought a disgrace; therefore, the Hanafi school of thought should be the ruling school of thought in this country. The book's author considers deviation from one school of thought to another subject to (Tazeeri) discretionary punishment based on the Fatawa-Al-Hindiyya.

According to the book "Islamic Emirate and Its System," religious minorities should not be permitted to practice judiciary based on their school of thought. The rationale behind this assertion is rooted in the historical experience of the Ottoman state, which, according to the author, demonstrated that a mixed judicial system incorporating external laws weakens the Islamic system.

Urf (Customs and Traditions)

The author explores the significance of Urf (Custom) and the nature of Afghans as integral elements within the framework of Islamic governance. He emphasizes the importance of respecting the customs and habits of the people in an Islamic state, as long as these practices align with Sharia principles. The author states, "In any Islamic state, the nature, habits, and customs of its people should be honored, provided they do not conflict with Sharia, including aspects such as clothing, appearance, and language."

In this context, the author draws upon the principles of Islamic jurisprudence concerning the status of and adherence to customs in Islamic society, as outlined in the book *Al Majallatul-Ahkam al-Adliyya*. The term Urf, or traditions, is defined as the accepted customs and interactions among people that persist over time. The author briefly touches on the influx of habits and imitations from the West during the presence of the American forces and their allies. The people of Afghanistan have adapted to these practices. However, the author expresses a critical stance: "These customs are not authentic Afghan customs, lack validity, and must be

⁴ Baderin, M. A. (n.d.). *Islamic legal theory in context*. SOAS University of London. Available at <https://eprints.soas.ac.uk/18456/1/Islamic%20Legal%20Theory%20in%20Context.pdf>

abolished. They contradict the holy Sharia and conflict with the nature and customs of the Afghan people, both historical and future residents of the region.”⁵

In this context, he draws upon insights from the book "Tatimmat ul-bayan fi Tarikh al-Afghan" by Sayed Jamaluddin Afghani. Afghani describes the Afghans: “Afghans are the largest tribes residing in Afghanistan, they are people characterized by courage, action, a warrior spirit, and resistance to foreign influences. Their traditional attire includes Shalwar Kameez, turbans, and chadors, while the women wear long and covered dresses. Afghans exhibit a strong cultural practice of respecting scholars, and elders, and are known for their hospitality. The majority adhere to the Hanafi school of thought, and in their villages and towns, Islamic education resonates strongly. Another notable custom is the presence of mosques in every village, accompanied by rooms set aside for students of religious knowledge, where people willingly provide them with food. The Ulema (Islamic scholars) enjoy great dignity, with people readily accepting their guidance, maintaining steadfastness in their religion, and demonstrating a strong resistance to foreign dominance.”⁶

Independence, Freedom of Expression and Belief, and Territorial Integrity

The author asserts that independence is a fundamental principle of the Islamic state and its structure, emphasizing that external interference in its affairs is unwarranted. He condemns the presence of Americans and their allies in Afghanistan, viewing it as a severe assault on the religious and moral values of Afghans, which prompted jihad in response. The author supports freedom of expression within the framework of Islamic principles, restricting its use to the promotion of Islam, the propagation of virtue, and the prevention of vice. While acknowledging the right to criticize the Amir and the head of the Islamic State based on precedents from the era of the first four Caliphs, he underscores limitations on this right, cautioning against inviting others to different religions or engaging in innovation.⁷ Regarding innovators, the author suggests that, even without a Takfir⁸ conviction, the head of the state has the authority to impose the death penalty.

Furthermore, the text recognizes the freedom of belief for followers of other religions within the Dhimmi⁹ framework and Maaed,¹⁰ ensuring they are not compelled to convert to Islam.

⁵ Ishaqzai, A. H. (2022. P.39). *The Islamic Emirate and its system*: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia

⁶ Ishaqzai, A. H. (2022. P.39). *The Islamic Emirate and its system*: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia

⁷ Innovation (Bedat) means creating new baseless rules or a new custom in Sharia

⁸ Takfir is condemning someone for converting from Islam to another religion

⁹ Non-Muslims who live in an Islamic country

¹⁰ Non-Muslims who have safety and security agreements with the Islamic State, like visa holders

Names of the Islamic State

The book delves into the nomenclature of the Islamic state, exploring the meanings of terms such as Imamate, Emirate, Caliphate, State, Sultanate, Government, and titles attributed to the head of the state, such as Caliph, Amir al-Mu'minin, Imam, Chief, Ruler, and Guardian. It introduces the Emirate as a system led by an Amir responsible for overseeing the public affairs of Muslims. The first individual addressed as Amir al-Mu'minin in Islamic history was Hazrat Umar, the second Caliph. Additionally, the book addresses the significance of having an emblem and flag for the Islamic State and its military forces, advocating for colors like white or black adorned with Kalima Tayyaba (the word of purity) or other symbols of Sharia and Islamic tradition.

Appointment of Amir

The author asserts the imperative of Imaamat-e-Kubra (Great Imamate) or assuming the position of the overall leader of the Islamic State for the establishment and restoration of religion. This role encompasses crucial responsibilities such as the revival of religious knowledge, upholding the pillars of Islam, leading Jihad, executing Hudood, overseeing the distribution of war booty, and promoting virtue while preventing vice. Drawing on narrations, hadiths, and explanations detailing the appointment of each of the four caliphs, the author underscores the significance of the pledge of allegiance as a symbol of submission and obedience to the Amir.

The pledge of allegiance by Ahlu al-Hall wal-'Aqd (the decision-making Muslim council) in appointing the Imam after the demise of the Prophet of Islam, carried out by some Muhajirin (migrants to Mecca) and Ansar (original residents of Madinah) in Saqifah Bani Sa'idah,¹¹ was termed the allegiance of Imamate. Additionally, the general pledge of allegiance of Muslims, which later transpired in the Mosque, was referred to as the allegiance of hearing and obedience. However, the appointment of the second caliph was grounded in the selection of his successor by the first caliph. The third caliph was appointed by a council of six individuals proposed by the second caliph, and the fourth caliph was chosen through a pledge of allegiance like the first caliph. Moreover, the author notes that the conquest-based acquisition of power is deemed a legitimate method for the Imam to ascend to power.

According to the author of the book "Islamic Emirate and its System," contemporary elections lack Sharia justifications. Citing the absence of such practices among the companions of the Prophet, he deems it unfit for Muslims. The author asserts that elections can perpetuate bias, ethnic sectarianism, and division among Muslims, thereby weakening the community. In the present era, he criticizes elections for their emphasis on equality and voting rights for all members of society, regardless of their knowledge, piety, gender, or religious affiliation. This,

¹¹ The place where Muslims came together and discussed the successor of the Prophet.

he argues, deviates from Islamic teachings, as the Quran acknowledges the distinction between those with knowledge and those without, asserting that only religious scholars are deserving of making decisions for the public. Additionally, the author raises concerns about the financial costs associated with elections, considering it wasteful and inconsistent with Sharia principles.

Furthermore, the author argues that candidates often make lofty promises during elections, only to fall short of fulfilling them once elected. He asserts that candidates may prioritize personal ambitions over serving the people. Consequently, the author deems it inappropriate for Muslim individuals to participate in free elections, as he perceives their purpose to be rooted in human laws rather than divine laws. He also expresses skepticism about the integrity of elections, highlighting the potential for fraud, deception, bribery, and other manipulative tactics that can influence the outcomes.

Unlimited Term of Amir

The author argues against limiting the term of an Amir (leader) in the context of Imamate. According to him, Imamate, as exemplified by the first four caliphs, does not have a specified time duration. The Prophet of Islam reportedly instructed Muslims to follow the ways of the right caliphs, and they remained in power until their death or martyrdom. The preferred method for appointing an Imam, according to the author, is through the council of Ahlu al-Hall wal-'Aqd, where the appointment of a caliph is considered a pledge of allegiance to the Imam. The text also touches on the procedures for and types of pledging allegiance. Notably, the author deems the involvement of women in this process impermissible, citing a lack of historical evidence after the death of the Prophet.

The text further states that an Imam has the authority to step down from leadership due to health complications or personal reasons. However, as long as the Imam is capable of serving the people, the author argues against removing him from the position. Removal of the Imam can occur under specific circumstances, including leaving the circle of Islam or engaging in immorality. Despite this, most Islamic scholars, according to the author, advise against deposing the Imam solely for immoral behavior or cruelty, emphasizing the importance of considering the rights of the people. The author posits that the Ahlu al-Hall wal-'Aqd Council's decision is the most appropriate way to remove an Imam.¹²

¹² Ishaqzai, A. H. (2022. P.10). *The Islamic Emirate and its system*: [al-Imarat al-Islamiat wa-Manzumatuha]. Darul Uloom al-Sharia

Conditions, Responsibilities, and Duties of Amir

According to the author of the book "Islamic Emirate and its System," a person can be appointed to the position of Imaamat-e-Kubra (the highest level of leadership of the Muslim community) who is a Muslim, free, male, adult, and capable of enforcing orders, provide justice and is from the Quraysh tribe.¹³ Moreover, he should know religious jurisprudence and be physically healthy. The author does not consider women qualified for Imamate due to reasons from the Quran and Sunnah: because he believes that socializing with people is one of the necessities of leadership, and according to the Sharia, such socialization with men is not permissible for women.

The book contains many historical narrations from the statements, methods, and policies of each of the first four caliphs (Abu et al.), as well as Islamic scholars, such as Ghazali and Mawardi, regarding the administration of the Muslim government. He believes that by following a particular set of rules, the Imam must have the necessary Sharia policy (that is, Sharia compliance and planning) to manage and lead the society. One of the duties of the Amir is to protect the religion, implement justice among people, expand security, collect the country's revenues, delegate tasks to qualified and deserving people, equip the Islamic army, and collect and spend booty and alms in an Islamic manner.

He states several rules to ensure better justice for the Imam. The most important of these rules are: 1- In all cases, he shall put himself in the place of other people and not like for others what he does not like for himself. 2- He shall not delay in fulfilling the needs of the people. 3- He shall not spend all his time on his selfish desires. 4- He shall carry on affairs with diligence, not force. 5- According to his knowledge and ability, he shall rule by Sharia so that most people will be satisfied with him.

Duties of People

The author consider it obligatory for the people to follow the Imam in the Islamic government in matters that the Sharia permits. Moreover, they should assist the Imam, respect him, and pray for him and other Islamic leaders and not deny them. Whenever they face oppression from members of the Islamic government, they should use patience and perseverance and use soft words in front of them¹⁴

¹³ Quraysh is the name of the tribe of Islamic Prophet

¹⁴ Ishaqzai, A. H. (2022. P.144). The Islamic Emirate and its system: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia

The Ahlu al-Hall wal-'Aqd Council

The Ahlu al-Hall wal-'Aqd Council is a group of Islamic scholars, elders, and influential people who must be Muslim males, wise, mature, and possessing the attributes of justice, knowledge, and insight. The purpose of being a scholar is the knowledge of Islamic Sharia; of course, considering the current conditions, it is important to be aware of legal issues, international laws, and political and economic relations with other nations. However, all Ahlu al-Hall wal-'Aqd Council members do not need to have this knowledge. Moreover, one of the most important duties of the Ahlu al-Hall wal-'Aqd Council is to identify the most suitable qualified person for the position of the Imamate, choose him, and pledge allegiance to him. Regarding the number of members of the Ahlu al-Hall wal-'Aqd Council, after mentioning the historical traditions and opinions of the scholars, he concludes that any number that brings the apparent participation of the Islamic Ummah in choosing the Caliph will be sufficient.

According to the author, the pledge of allegiance of this group is sufficient for the appointment of an Amir, whereas the pledge of allegiance of the rest of the ordinary people is not valid for the appointment of an Amir. On the other hand, it will be enough for other ordinary people to only know that they are under the command of the Imam. It is noteworthy that as per the view of the author, there is no role for women and Dhimmi (non-Muslim minorities) in the appointment of the Imam because there is no narrative that proves that women participated in the appointment of the Muslim caliphs with men after the death of the Prophet of Islam. From the Sharia point of view, the participation of non-Muslims in such a structure is not permissible.

The author of the book "Islamic Emirate and its System" has also devoted a detailed discussion to the position of the council in the Islamic governance system in which he discusses the definition, position, ruling, and reasons for the legitimacy of the council in the light of the Qur'an and the Sunnah. In this context, he criticizes the democratic system because, in the democratic system, any person can be a member of Majlis al-Shura (Parliament), while in the Islamic Council, only people who are Islamic scholars and have unique characteristics, like Ahlu al-Hall wal-'Aqd can participate; in addition to that, he does not consider ordinary people and religious scholars to be equal in terms of personality. Moreover, concerning the council's decisions on whether it is obligatory or just for further information, he believes that the council should first deal with those issues not mentioned in the Quran and Sunnah texts. Secondly, based on the opinion of most of the Islamic scholars, holding the Shura is Mubah (Permissible), and the decisions of the Shura are binding on the Imam. If it is not binding, it would not be considered one of the essential matters of the Islamic system.

Participation of Women

The author of the book "The Islamic Emirate and Its System" considers women's participation in political matters from various perspectives. Among these reasons is the belief that the joint participation of women and men in society does not deem it permissible because it leads to their joint activities in society, which he does not consider appropriate. In his view, women should not be involved in public affairs with male individuals who are not their legal guardians (Mahram), as it leads to moral corruption. He believes that men are responsible for providing for the family financially and women are naturally inclined towards tasks specifically meant for them, such as childbirth and childcare. Men should be engaged in earning a livelihood outside the home or fulfilling governmental duties. He considers this as the divine system, where God has deemed the people of Afghanistan deserving of it, while other systems in the world are considered systems of disbelief and ignorance. He believes that the Western world aims to involve women in education, culture, and women's rights under the guise of equality, even promoting this idea in Islamic countries. He emphasizes the importance, especially for Muslims and Islamic scholars, to explain and convey the rights of both men and women according to the Quran and Sunnah to everyone.¹⁵

Although in the old books of Islamic political jurisprudence, there is no topic under the title of modern education, this issue is one of the most critical topics of this book, in which the author has tried to prioritize the teaching of religious knowledge over modern sciences. In addition, based on the historical experiences of Afghanistan, he introduces modern schools and education as the cause of the lack of attention to religious knowledge in the society. Besides, he assigned a separate title to women's education, and while he does not negate women's education, he has emphasized the virtue of teaching Islamic knowledge to girls. Moreover, concerning the conditions of girls' education, he cites Islamic narrations and the prohibition of women from leaving the house. He emphasizes that women should stay at home, and if they go out, they should observe special conditions and complete Hijab.

The author argues with the verses of the Qur'an which have been revealed about the women of the Prophet of Islam¹⁶ and does not consider co-education of girls and boys permissible. In this regard, he addresses the people of Afghanistan in a unique way that they should not forget their Afghan honor and bravery and not enroll their daughters in co-education. In this case, he has argued with the fatwa of some scholars; in these fatwas, it is stated that male teachers should not teach girls because of the fear of temptation and dire consequences. In this case, he quotes a poem from the book of Rooh Ul-Bayan: "May the eyes of a woman be blind to strangers...

¹⁵ Ishaqzai, A. H. (2022. P.10). *The Islamic Emirate and its system*: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia

¹⁶ Quran: Surah Al-Ahzab verse 53, Surah Al-Noor verse 30

Because if she leaves the house, she must be in the grave”.¹⁷ As part of this topic, he writes to the people of Afghanistan: Where is your honor, O Afghans? How do you let your girls outside for anyone to look at? Avoid this great injustice.¹⁸

The travel of women without a Mahram¹⁹ is another topic that is discussed in this book with reference to the hadiths of the Prophet. In this part, women’s travel without their Mahram is prohibited. Moreover, the author has tried to clarify women’s rights and position in Islamic Sharia. At the same time, he described the superiority of men over women in Islam by referring to the traditions and sayings of Islamic scholars. In addition to that, he condemns the equality of women and men in democratic systems and considers it against the nature and creation of women.²⁰

Background of Islamic Political Jurisprudence

Since the publication of the book “Islamic Emirate and Its System” in 2022, it has attracted the attention of many experts, intellectuals, and Islamic scholars. Religious science experts, civil and human rights activists, and media activists interviewed in this research also expressed their opinions about the book.

The researcher, who also has a background in studying and teaching Islamic sciences, believes the book “Islamic Emirate and its System” relies on classical theories and historical narrations of Islam. It proposes a particular type of governance for the ideal system of the Taliban in Afghanistan, which is not compatible with the basic teachings of Islam and the developments of the contemporary world in many ways. Even in some cases, there are baseless narrations and Afghan customs and traditions presented as Sharia references in the book.

As in the West, where Machiavelli (1469-1527) wrote the *The Prince* for Lorenzo de' Medici, Duke of Urbino in 1513, some Islamic scholars in the past have written books for caliphs, such as the book “al-Kharaj” by Imam Abu Yusuf (731-798), a student of Imam Abu Hanifah (767-699), who wrote about the administration of financial affairs of the Islamic caliphate for Harun

¹⁷ Ishaqzai, A. H. (2022, P.250). *The Islamic Emirate and its system: [al-Imarat al-Islamiat wa-Manzumatuha]*. Darul Uloom al-Sharia 0

¹⁸ Ishaqzai, A. H. (2022, P.270). *The Islamic Emirate and its system: [al-Imarat al-Islamiat wa-Manzumatuha]*. Darul Uloom al-Sharia.

¹⁹ Georgetown Institute for Women, Peace, and Security. (2022). *Mahram: Women's mobility in Islam*. Available at <https://giwps.georgetown.edu/wp-content/uploads/2022/08/Mahram-Womens-Mobility-in-Islam.pdf>

²⁰ Ishaqzai, A. H. (2022, P.301). *The Islamic Emirate and its system: [al-Imarat al-Islamiat wa-Manzumatuha]*. Darul Uloom al-Sharia

al-Rashid (763-809). The book of Alkharaj played an essential role in collecting taxes and organizing financial affairs and governance in that era.

Similarly, Abu Al-Hasan Ali Ibn Muhammad Ibn Habib al-Mawardi (974-1058) and Qazi Abu Yaala (990-1066), who lived in the same era and city, also wrote two books with similar names, i.e., The Laws of Islamic Governance or Al-Ahkam as-Sultaniyyah which are known as reliable books in the field of political jurisprudence or Islamic governance system. Among the later Islamic scholars, Ibn Taymiyya (1230-1283) can be considered one of the scholars who wrote a book on this topic under the name of *as-Siyasat Al-Shari'ah fi Islah ar-Ra'i war-Ra'iyah*.

Islamic political jurisprudence, or the system of governance in Islam, has been one of the intellectual debates and concerns among Islamic scholars, which started in the recent centuries once again with Sayyid Jamal al-Din Afghani (1838-1897), followed by his students in Egypt, for example Sheikh Mohammad Abuhu (1905-1849), and later by Sayyid Qutb (1966-1906) and Hassan Al-Banna (1906-1949), which resulted in the emergence of the Muslim Brotherhood Movement in Egypt and some Islamic countries, including, Afghanistan.

In the 20th century, the peak of political thinking in Islam links back to the thoughts of Maulana Abul Ala Maududi (1903-1979). He is known as the founder of Jamaat-e-Islami Pakistan, which is a radical political movement in the Indian subcontinent and today's Pakistan. Maududi introduced Islamic ideology as superior to capitalism and communism; according to Maududi, the Islamic State is a democratic caliphate or a religious democracy because the people must elect its leader and should not be governed by scholars or jurists alone. Moreover, laws and governance in such a government are established in light of the Qur'an and Sunnah; he supported the idea of an Islamic world government, rejected the role of women in politics and community administration, and considered politics to be a male domain only. Nonetheless, Maududi was not in favor of taking power through revolution and bloodshed; instead, he believed that the best way to obtain power and establish an Islamic government is to train Islamic political leaders who would eventually take power and establish an Islamic system.²¹

In recent years, numerous books and articles have been authored by Islamic scholars exploring the Islamic governance system. However, the perspectives presented in these works have often lacked practical applicability in Islamic societies. Notable examples include "Nizam al-hukm fi al-Islam" by Jordanian scholar Mahmoud Al-Khaldi (1946), "Fiqh al-dawah fi al-Islam" by

²¹ Mehmood, W., & Ahmad, W. (2018). Maulana Maududi, Islam and Ideology. Available at https://www.researchgate.net/publication/327307105_MAULANA_MAUDUDI_ISLAM_AND_IDEOLOGY

Sheikh Yusuf Qardhawi (1926-2022), "Kitāb al-dīn wa- l-data," and "The Implementation of the Sharia" by Mohammad Abed Al-Jabri, among others.

The views of Islamic scholars about Islamic governance from the previous centuries to the present era have only been found in books, articles, or political agendas of radical Islamic groups, and its practical model has never been implemented in any specific area of any Islamic country. The Taliban is the only Islamist group that tried to establish an example of an Islamic governance system in Afghanistan based on their political doctrine and the book of Haqqani, after their victory on August 15, 2021. Furthermore, this book is one of the latest sources written by a Sunni and Hanafi scholar on the Islamic system that the Taliban claim to have established in post-republic Afghanistan.

Almost all books written about the system of governance or Islamic political jurisprudence are similar in their subject and contents. All these books begin with the topics of Imamate, its conditions, methods of appointment, and pledge of allegiance, and then conclude with other components of governance, council, Ahlu al-Hall *wal*-'Aqd, the appointment of rulers for the territories, the command for jihad, addressing lawsuits and judgments, the distribution of booty, the issues of tax collection, dealing with conquered territories, and rulings related to Hisbah (upholding community morals).

Review and Analysis of the Main Subjects of the Book “Islamic Emirate and its System”

Below is a review and analysis of most important topics of the book “Islamic Emirate and its System”, which are related to the restriction of civil space in Afghanistan:

- 1- Religious State (Theory of Divine Sovereignty)
- 2- Islamic Legislation (Monopoly of the Hanafi School of Thought)
- 3- Appointment of Amir, Pledge of Allegiance, and a Unique Authority
- 4- Ahlu al-Hall *wal*-'Aqd Council
- 5- Independent and Islamic Judicial System
- 6- Status of Women
- 7- Accepted Customs and Fighting Against Imported Customs (imported ideologies and phenomena)

Religious State (Theory of Divine Sovereignty)

The scholars of Islamic political jurisprudence consider the religion of Islam to be a mixture of religious, legal, political, social, economic, and cultural rulings, which can regulate all the affairs of human life in society. In this regard, there are verses in the Qur'an, such as: "And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims."²² This conveys the completeness of this religion in all matters.

They also believe that "Legislation is not but for Allah,"²³ so Muslims should only submit their will to the supreme sovereignty of God. Therefore, an Islamic state and Islamic governance system are considered necessary to implement commands of God and, according to Islamic political jurisprudence scholars, the theory of divine sovereignty apparently constitutes a general difference between a democratic system in which the sovereignty belongs to people and an Islamic system in which the sovereignty belongs to God. Nevertheless, some contemporary Islamic scholars do not agree with this view, and they consider democracy not in conflict with the theory of divine sovereignty, but rather in conflict with individual sovereignty because it prevents tyranny and oppression in society. Moreover, from the point of view of Islamic political jurisprudence, the domain of Islamic authority and sovereignty is not exclusive to specific geography at all because the internal solidarity of the Muslim community (the Ummah) based on reasons from the Qur'an and the Sunnah conveys the universality of the Islamic system.

The author of the book, "Islamic Emirate and its System", like other scholars of the past, after making statements about the completeness of Islam in all spheres of human life, talks about proving the possibility of implementing Sharia and Islamic faith in Afghanistan and in the present era by the Taliban within the framework of the Islamic Emirate System. He considers the so-called imported solutions, i.e., non-Islamic systems, to be the cause of the backwardness of Muslims. Moreover, he considers contemporary governments to be extravagant and luxurious, and he defines the real Islamic government as a government in which its officials are devoted and pious and support the rights of the poor and oppressed.

According to the history of political Philosophy,²⁴ the course of the history of all kinds of governments in the world has four important stages in the context of political rulership. The first stage is the rule of city government out of which the city government of Athens can be considered the first historical example. The second stage is the period of the appearance of superpowers who wanted to seize and govern other parts of the world (Global Sovereignty) . It started with Alexander the Great in the 4th century BC and was followed by the establishment of the Roman Empire which lasted until its fall in the middle of the 15th century. The third stage is the emergence of the theory of national sovereignty in the middle of the 15th century with

²² Quran. Surah Al-Nahla, verse 89 (translation) <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

²³ Quran, Surah Yusuf, verse 40 <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

²⁴ Pazargad, B. (1954). History of political philosophy.

Machiavelli, and the fourth stage is the age of returning to Global Sovereignty in the form of Globalization, which breaks the boundaries of national sovereignty, and which we witness with the emergence of the internet and international organizations. Hence, we can see that the religion of Islam also appeared in a stage of history, i.e., 610 AD, during the Roman Empire and the era of global rule, and from another point of view, it appeared in the Middle Ages, the era of slavery and hereditary monarchies. Therefore, sending invitation messages from the Prophet of Islam to the Roman Emperor, Heraclius, the King of Persia, Khosrow Parviz and King Najashi of Utopia shows the fact that the Prophet of Islam tried to spread Islamic rule to all parts of the world.

Scholars of Islamic political jurisprudence has always tried to justify the theory of Universal Islamic Sovereignty in their books and publications. Abul A'la al-Maududi refers to it as "Establishment of Religion,"²⁵ Sayyid Jamal al-Din Afghani interprets it as Pan-Islamism,²⁶ and other Islamic movements also express their internal solidarity to achieve inclusive and borderless Islamic sovereignty.

It is worth mentioning that some contemporary Islamic scholars, such as Sheikh Yusuf al-Qaradawi, think that an Islamic state is not a religious state but a civil state. In his opinion an Islamic state is neither a religious theocracy that rules over the people under the name of divine right, nor is it a completely religious state whose leaders claim divinity and represent the will of God on earth; rather, an Islamic state is a civil state that rules based on Islamic rulings and is based on the foundation of pledge of allegiance, council, and piety of its officials.²⁷ Qaradawi also views Islamic governance as universal.

From the study of books on political jurisprudence, it is understood that previous scholars have discussed the doctrine of Islamic governance in an idealistic and general way without considering its application to any specific geography. The author of the book "Islamic Emirate and its System", however, has presented the land of Afghanistan as a practical example of the implementation of an Islamic ideal system of the Taliban. This is proven by the commitments that the Taliban made on February 29, 2020, in the Doha Peace Agreement²⁸ with the United States of America that they would not allow any other radical Islamic groups to operate in Afghanistan, commitments they have broken. The reports of the media and international organizations in the last two years show that after the Taliban regained power, the leaders and religious radical movements in Asia and Africa have pledged their allegiance or shown interest in the Taliban and welcomed the withdrawal of American forces from the country.²⁹ On the other hand, the killing of an Al-Qaeda leader in Kabul in a drone attack by the United States in 2022, the reports of the United Nations and some regional countries about the presence of

²⁵ Mehmood, W., & Ahmad, W. (2018). Maulana Maududi, Islam and Ideology. Available at https://www.researchgate.net/publication/327307105_MAULANA_MAUDUDI_ISLAM_AND_IDEOLOGY

²⁶ Author(s). (2020). Alma Said Jamaluddin Afghani. Available at https://www.researchgate.net/publication/338543249_Alma_Said_Jamaluddin_Afghan

²⁷ Qaradawi, Y. (n.d.). Jurisprudence of the State (pp. 30-32).

²⁸ U.S. Department of State. (2020, February 29). Agreement for bringing peace to Afghanistan. <https://www.state.gov/wp-content/uploads/2020/02/Agreement-For-Bringing-Peace-to-Afghanistan-02.29.20.pdf>

²⁹ Byaruhanga, C. (2021, August 19). Africa's jihadists: What Taliban takeover of Afghanistan means. BBC News. <https://www.bbc.com/news/world-africa-58279439>

extremist religious groups in Afghanistan, including the claims of Central Asian countries and Pakistan regarding the presence and activities of the Pakistani Taliban and Tajik, Uighur, and Uzbek fighters, indicate a paradox in this regard.³⁰

Is the Taliban government really a type of government with a motto of guidance; that is, religious, just, and supporter of the poor? Unfortunately, the reports of international forums and media in the last two years have indicated the opposite of that. For example, it is reported that the rates of poverty and unemployment have increased, and tens of thousands of retirees have not received their pensions and are living in poverty.³¹ Moreover, with regard to the provision of justice, the reports of the United Nations and other human rights institutions, including the reports of the United Nations Special Rapporteur on the situation of Human Rights in Afghanistan, indicate that there are currently more than 17 thousand prisoners, including dozens of women and underage children who are living in Taliban prisons in unsuitable conditions, as there is systematic torture and mistreatment of prisoners³². In addition to this, the UNAMA has recently reported on the extrajudicial killing, torture, ill-treatment, arbitrary detention, imprisonment, and disappearance of 800 prisoners and detainees from January 1, 2022, to July 31, 2023, of which 24 percent are civil activists, human rights defenders, and journalists.³³ Furthermore, 47 civil activists have been arrested in the first six months of 2023 on the charges of protesting, criticizing and propagating against Taliban.³⁴

Islamic Legislation (Monopoly of the Hanafi Madhhab)

Islamic Sharia is one of the fundamental sources of legislation in Islamic countries. Jurisprudential books and sources, including texts, interpretations, and fatwas are hypothetical jurisprudential issues that were written by Islamic scholars in previous centuries and have not been updated. Many pages of these books still describe the issues of slavery and related rights.

The first legal movement for the codification of jurisprudential issues in the form of codified law began during the Ottoman Empire with the compilation of Majalla al-Ahkam al-Adliyya (*legal code of Islamic civil transactions*) in 1876.³⁵ Majalla al-Ahkam al-Adliyya is a legal collection taken from the sources of Hanafi jurisprudence, which has 1851 articles on civil matters. This collection of jurisprudence rulings has since been the reference of judges, defense lawyers, and judicial institutions in the legal system of Afghanistan. Even today, the reflection

³⁰ United Nations. (Year). Title of the document. Available at <https://digitallibrary.un.org/record/4012868?ln=en>

³¹ Kawa, A. (2023, September 24). Retirees in crisis: Taliban claim that pension is not salary. *Hasht-e Subh Daily*. <https://8am.media/eng/retirees-in-crisis-taliban-claim-that-pension-is-not-salary/>

³² ACAPS. (2023, June 26). Afghanistan: Spotlight on social impact, March-June 2023. Available at https://www.acaps.org/fileadmin/Data_Product/Main_media/20230626_ACAPS_Thematic_report_Afghanistan_spotlight_on_social_impact_March-June_2023_.pdf

³³ United Nations Assistance Mission in Afghanistan. (2023, September). Treatment of detainees. Available at https://unama.unmissions.org/sites/default/files/unama_report_-_eng_-_treatment_of_detainees_sept_23_0.pdf

³⁴ Rawadari. (2023, August). *Afghanistan Human Rights 2023* [PDF document]. Available at https://rawadari.org/wp-content/uploads/2023/08/RW_AFGHumanRights2023_Dari.pdf

³⁵ Turkey. (n.d.). *Mejelle: Being an English translation of Majallahel Ahkam-i Adliya and a complete code on Islamic civil law*. Available at <https://archive.org/details/mejellebeingengl0000turk/page/n7/mode/2up>

of Sharia rules in the laws of Islamic countries, as was common in Afghanistan until the fall of the Islamic Republic, has maintained its position through codification in the legislative process. According to Articles 2 and 3 of the 2004 Constitution of Afghanistan, the religion of Islam was registered as the official religion in this law without any special conditions, and no law could be passed in conflict with the rules of the religion of Islam.³⁶ Moreover, as per the mentioned law, in the absence of a ruling in the laws, the courts were required to rule by Hanafi jurisprudence. In addition to that, according to Article 131 of the Constitution, the courts applied the rulings of Shia jurisprudence in cases involving personal matters of followers of the Shia sect.³⁷

The author of the book "Islamic Emirate and its System" considers the current statutory laws to be against Islamic Sharia and completely rules their annulment. On page 24 of his book, he has explained this matter under the title (Reasons for Annulment of Statutory Laws). He has based his argument on four reasons including, Quran, Sunnah, Ijma (Consensus), and Rational. First, he argues with verses of holy Quran which state:

﴿فَإِنْ لَمْ يَسْتَجِيبُوا لَكَ فَاعْلَمْ أَنَّمَا يَتَّبِعُونَ أَهْوَاءَهُمْ وَمَنْ أَضَلُّ مِمَّنِ اتَّبَعَ هَوَاهُ بِغَيْرِ هُدًى مِنَ اللَّهِ إِنَّ اللَّهَ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ﴾.

Translation: But if they do not respond to you - then know that they only follow their [own] desires. And who is more astray than one who follows his desire without guidance from Allah?

Indeed, Allah does not guide the wrongdoing people.³⁸

He believes that following statutory laws, except for the Sharia rulings, is following whims and fancies. He also argues using another verse of the Quran which states:

«: يَا دَاوُودُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَىٰ فَيُضِلَّكَ عَنْ سَبِيلِ اللَّهِ إِنَّ الَّذِينَ يَضِلُّونَ عَنْ سَبِيلِ اللَّهِ لَهُمْ عَذَابٌ شَدِيدٌ بِمَا نَسُوا الْيَوْمَ الْحِسَابَ»

Translation: "O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allah." Indeed, those who go astray from the way of Allah will have a severe punishment for having forgotten the Day of Account.³⁹

He writes that in the above verse, God has explained the way of ruling to David in two ways, and there is no middle way. The first way is to rule based on the revelation that was revealed to the Prophet, and the second way is to do everything that is against the revelation. His other argument is based on a verse of the Quran in which God says to the Prophet of Islam:

« ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ»

Translation: Then We put you, [O Muhammad], on an ordained way concerning the matter [of religion]; so, follow it and do not follow the inclinations of those who do not know.⁴⁰ In this

³⁶ Afghanistan. (2004). *Constitution of Afghanistan*. Available at

https://www.constituteproject.org/constitution/Afghanistan_2004

³⁷ Afghanistan. (2004). *Constitution of Afghanistan*. Article 131. Available at

https://www.constituteproject.org/constitution/Afghanistan_2004

³⁸ Quran, Surah Al-Qasas, verse, 50, available at: <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

³⁹ Quran, Surah Sad, verse, 26, available at, <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

⁴⁰ Quran, Surah Al- Jaathiyah, verse 18, available at, <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

verse, God has commanded the Islamic Ummah to follow the Sharia and avoid following the wishes of those who do not know.

The author of the book "Islamic Emirate and its System" has mentioned other verses in support of this issue as well. In a part of his arguments, he writes: "Therefore, it has been proven that the true authority in the whole world is not for any person except Allah Almighty and it is necessary for the custodians of the affairs of Muslims in every state to submit to this supreme authority. And this is how Islamic politics differs from secular democracy because democracy is based on the idea that people have supreme authority, and they can choose for themselves whatever they want without obeying any principle or ruling, even, contrary to the religious texts."

Some contemporary Islamic scholars have expressed more balanced opinions about the position of Islamic Sharia and statutory laws. For example, Sheikh Yusuf al-Qaradawi has written a detailed discussion on this issue in his book *Fiqh al-dawlah*, the summary of which is as follows: Sharia and the absolute sovereignty of Allah Almighty as the source of Sharia rulings is completely fixed, but this does not mean that humans do not have a share in legislation as much as Allah Almighty has allowed him. So, it is prohibited only if Allah Almighty has not given him permission: for example, in matters of worship and so on, if a person wants to add more or less, or consider halal (permissible) as haram (prohibited) and haram as halal, or when they establish a legal law against clear and correct texts of the Sharia, or when they make laws whose purpose is to spread vice and practices which are contrary to modesty, etc. From his point of view, compliance with the general objectives and rules of the Sharia for ensuring benefits, eliminating corruption, and meeting people's needs is a condition in this regard. According to Qaradawi, many detailed modern laws are not against Sharia and its general objective because their purpose is to cause benefits, prevent harms, and observe good customs, such as traffic, shipping, aviation, labor and workers, health, agriculture, etc.⁴¹ As far as it is known, nowadays, statutory legislation in accordance with Sharia principles is considered one of the accepted methods in all Islamic countries. So, with the development of different areas of human life and the expansion of international relations, the sources of legislation in Islamic societies are now not just limited to Sharia sources, but conventions and legal obligations of governments also play an important role in national laws.

The Taliban have realized that nullification of the previous laws is not a solution, and for this reason, the Taliban leader issued Decree No. 43 dated May 31, 2023 in which he ordered the creation of an independent commission to review previous legislative documents; however, since all members of this commission are religious mullahs, it seems unlikely that they will reconsider other sources of Afghan legislation, including international human rights obligations, while reviewing these documents. Moreover, Afghanistan is a member of seven major human rights conventions⁴² and during the former republic government, the legislative

⁴¹ Qaradawi, Y. (n.d.). *Jurisprudence of the State* (pp. 62-65). <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

⁴² United Nations Human Rights Office of the High Commissioner. (n.d.). Treaty Body Database. Available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN

approach in Afghanistan was based on the reflection of international human rights documents in national laws because conventions alone do not have the status of mandatory laws in the Afghan legal system.

On the other hand, basing the official religion of the state on the Hanafi school of thought, as stated in the book “Islamic Emirate and its System”, is not compatible with the principles of Islam because schools of thought (Madhhabs) did not exist at the beginning of Islam; they were formed later on with the emergence of genius Islamic scholars, the expansion of Islamic territory, and the need to solve new jurisprudential issues during the 2nd to 5th century of Hijri. In addition to this, the mentioned book considers conversion from one school of thought to another as punishable by (Taazir) punishment; whereas, according to the principles of Islamic jurisprudence, especially when it comes to the issuance of Fatwa, an Islamic ruler can issue a fatwa based on another school of thought, depending on conditions and circumstances.⁴³ For instance, most of the materials of the former Civil Code of Afghanistan have been taken from Hanafi jurisprudence, but for convenience and due to differences of time and conditions some issues have been ruled in accordance with other school of thoughts. For example, Article 194 of the Afghan civil code about the separation of a wife due to absence of a husband is based on Maliki and Hanbali jurisprudence for which they have specified a period of three years or more.⁴⁴

In addition to that, basing the official religion of a state on a specific school of thought (Madhhab) can be considered a cause of dispute and disregard of the presence of followers of other sects and Islamic religious minorities in Afghanistan. For this reason, after the Taliban regained power, based on the reports of international human rights organizations, there has been trouble and mistreatment of the followers of the Ahmadiyya sect which is one of the Islamic religious minorities.⁴⁵ Furthermore, in the last two years, the Taliban have used discrimination and mistreatment against the followers of the Shia school of thought, as recently, based on the instructions of their leader, the Taliban selected Sunni scholars for establishing councils of religious scholars in Shia provinces of Bamyan and Daykundi. Notwithstanding that, according to the Council of Shia scholars, the followers of the Shia school of thought are present in 22 provinces of Afghanistan.⁴⁶ Therefore, official compliance with the Hanafi school of thought may cause controversies in the future regarding the presence and activities of followers of other Sunni schools of thought or Islamic religious sects, such as Salafis, Wahhabis, Baha'is, etc.

Recently, reports have been published in some media and social networks about the Taliban in the Badakhshan and Baghlan provinces of Afghanistan forcing some members of the Ismaili

⁴³ United Nations Human Rights Office of the High Commissioner. (n.d.). *Treaty Body Database*. Available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN

⁴⁴ Faculty of Sharia, Kabul University. (n.d.). *The Rules of Fatwa: On the Permissibility of Fatwa Based on Other Schools of Thought*. [Textbook]. Kabul University.

⁴⁵ United States Department of State. (2022, June 2). 2021 report on international religious freedom: Afghanistan. <https://www.state.gov/reports/2021-report-on-international-religious-freedom/afghanistan/>

⁴⁶ Amu TV. (2023, September 24). Former politicians and Jihadi leaders meet virtually to discuss ongoing crisis. Available at <https://amu.tv/66092/>

Shia minority to change their school of thought (Madhhab), which is worrisome.⁴⁷ It is evident that the tendency of Islamic rulers to a particular school of thought can cause sedition and riots for Muslim societies.

The history of Islam has witnessed religious pluralism in the past. The growth and existence of different schools of thought during the emergence of schools of jurisprudence was supported by the Mujtahids and caliphs of the time. For example, when Harun al-Rashid, the Umayyad caliph, met Malik Ibn Anas, the leader of the Maliki school of thought or Ahl al-Hadith, during the Hajj pilgrimage, he told him that if Imam Malik wished, he would like to formalize the Maliki school of thought as the only official school of thought in the entire Islamic territory. However, Imam Malik Ibn Anas rejected this request of the caliph and said: "People everywhere have their religious leaders and it would be better to leave them on their own."⁴⁸

On the other hand, the Hanafi school of thought is one of the major schools of thoughts in the Islamic world which has a moderate attitude towards all religions and followers of Islamic sects. The status of tradition and rationality in this school of thought is more obvious than any other school of thought; for this reason, the other name of this school of thought Ahl al-Ra'y (the holders of opinion). One of the most valuable words of Imam Abu Hanifah in the discussion of theology (matters of belief) is that he said in his booklet of Fiqh al-Akbar: "We do not declare any Muslim a blasphemer because of sin however grave, unless that Muslim considers the sin permissible. Nor do we revoke the status of belief from him; and we continue to call him a believer, genuinely. It is possible to a sinful believer {deviant} without being a blasphemer." Therefore, any antagonism to other Islamic sects, such as Shias, by the followers of the Hanafi school of thought, including the Taliban, who call themselves Hanafi, is actually considered a great injustice against this school of thought (Madhhab).⁴⁹

Needless to say, one of the goals of legislation in all legal schools, including Islamic jurisprudence, is to facilitate and address people's problems. There are 527 verses in the Qur'an and a total of around three thousand hadiths about practical rulings, which cannot in any way be sufficient to address all the increasing legal issues and needs of today, because many new issues emerge every day that require rulings and regulations. Islamic Mujtahids who have compiled books, commentaries, and fatwas by understanding the needs of the times and the development of society in the framework of religious schools have explained thousands of jurisprudential issues in a hypothetical way. Moreover, the codification and classification of these issues in the form of legal articles and in light of the progress of other sciences, such as criminology, forensic, criminal psychology, and civil and customary international laws have made the judicial system and the job of judicial and legal institutions easier in Islamic societies. However, ruling on the nullification of statutory laws and generalization in the implementation of Sharia cannot solve the problems of today's societies.

⁴⁷ Sangar. (2023, September 21). "مسلمان سازی" اسماعیلیان [The Taliban project of "Islamizing" the Ismailis]. Available at <https://sangar.info/fa/mu/2023-09-21-10-08-25>

⁴⁸ Mahmassani, S. (n.d.). Legislative Situation in Arab Countries; Its Past and Present. Retrieved March 12, 2023.

⁴⁹ Author. (Year). Fiq Akbar. Available at <https://ebooks.worldofislam.info/ebooks/Islamic%20Monotheism/fiqakbar.pdf>

Appointment of Amir, Pledge of Allegiance, and Unique Authority

According to the author of the book "Islamic Emirate and its System", the Imam, Amir, or Caliph of Muslims is a completely distinct and unique character who must have a series of excellent personal and religious qualifications, and by having faith in his religious and political position, he should lead the Muslim community on behalf of the Prophet of Islam, and try to enforce religion, revive and promote religious sciences, strengthen pillars of Islam, rise to jihad and propagate virtue and prohibit vice.

Moreover, the manliness of being a Muslim, not being a slave, having wisdom and maturity, the ability to carry out affairs, having justice and being from the Quraysh tribe, which means from the tribe of the Prophet of Islam, are among the most important of these attributes. According to his opinion, an Amir must have the ability of *ijtihad* and have the necessary physical health. In fact, the definition, and characteristics that Sheikh Haqqani has expressed for Amir have room for discussion and debate.

First, based on the historical narrations, the Prophet of Islam did not appoint any deputy or successor for the leadership of the Islamic Ummah, rather, Muslims themselves chose a leader for themselves. Moreover, according to the statements of each of the four right caliphs, none of them claimed to be the successor of the Prophet, but they have always presented themselves as a part of the Muslim community. The heads of the governments that the author has named as Islamic caliphs in the history of Islam, such as those in the Abbasid, Umayyad, and Ottoman caliphates, did not meet many of the mentioned qualities and conditions to become Amir. Some of these caliphs reached the caliphate at a young age, and most of them were not even jurists, let alone had the level of *ijtihad*; furthermore, many of these caliphs were famous for partying and having fun.⁵⁰ In addition to that, the condition for an Amir to be from the Quraysh tribe does not apply to non-Arab caliphs. So how can such governments be regarded as perfect examples of Islamic systems? Furthermore, the existence of the two conditions of the Amir being a Quraysh and having the degree of *ijtihad* cannot be seen in the former and or the current Taliban leaders.

Dr. Amin Ahmadi, a well-known scholar and university professor, says as follows: "It can be said that the first principle and rule is that God did not create any human being under the domination and ownership of anyone else, and everyone can strive to improve their individual and group life and bring their human talents to perfection. The Principle of Original Permissibility (*Ibahah*) means that the general principle in all matters is that everything is permissible unless it has been clearly declared as prohibited by Sharia. Humans make efficient and effective legal, customary, social, cultural, and political institutions according to their

⁵⁰ Zaidan, J. Political History of Islam. Publisher. p. 67. (Accessed April 2023)

intellectual and moral development, and God has not opposed this process of human intellectual and moral development.

Therefore, in this context from an epistemological point of view is there a clear proof that can be referred to God and the Prophet, which shows God's disapproval to rights and freedoms of every human being? Is there such a proof that He allowed the Taliban or any other Islamist group to dominate the fate of the people or has given them the right to control people based on their religious views? According to me, no such proof can be found from Qur'an and Sunnah for the above two cases. Moreover, the most important source of the Taliban for controlling people is the viewpoints contained in the books of jurisprudence and scholars of a certain school of thought and the appearances of some verses and narrations. Nevertheless, in this regard there are several fundamental problems in the argument of Taliban:

1. The jurisprudential views contained in the jurisprudence books of the scholars of a particular school of thought are at best the ijtiḥād of these jurists, who do not even represent the opinion of the founder of that very school of thought. And these ijtiḥāds are valid only for those who legally imitate them. Hence, it cannot be a Sharia proof for those who do not imitate these jurists or act according to the opinions of other jurists. In addition to that, if the opinions of these jurists are fabricated or have disputes, it is not necessary even for the followers of that particular school of thought to imitate these jurists and neither are the words of these jurists a Sharia proof for them to follow.
2. Taliban claim that their argument with revelations of the verses, narrations and sayings of scholars is a form of ijtiḥād. Firstly, it is unknown that the scholars of the Taliban are mujtahids and have fulfilled the sharia conditions of ijtiḥād; secondly, even if they are supposed to be mujtahids, their ijtiḥād from sharia point of view cannot be a sharia proof for everyone in a pluralistic society. Therefore, the Taliban cannot call the jurisprudential views of their books or their own ijtiḥād as the ruling of God and as a matter of fact, no jurist dares to call his ijtiḥād the ruling of God. Furthermore, no jurists can claim of discovering the decree of Allah Almighty which is called Sharia; hence, Taliban in a pluralistic society do not have the right to change their jurisprudential views into general laws and based on that control people.

The rights and freedoms principles are not even against the jurisprudential views of the books, for example, the principle of forming a political party and criticizing the government are not something that are prohibited in these books.

Taliban consider themselves the owners of the fate of the people under the title of Ulu'l-amr (those charged with authority) and they justify it from jurisprudence and allow themselves to make people's lives more religious and control them within the framework of a series of self-made regulations that they think will make the society more religious.

In this regard, the main point is that the Taliban cannot show a proof from the Qur'an and Sunnah that God has made them the owners of the political fate of the people, and from a Sharia

point of view, they cannot prove that victory through war will make them the owners of the fate of people.

Of course, hadiths have forbidden armed attack on sultan but not that a defeated sultan is blessed with religious sanctity.”⁵¹

Mr. Qasim Rahmani, who is an expert in legal issues and has experience of working with various national and international organizations in Afghanistan, says about the system proposed in the book: “Taliban are looking for institutionalization like the Islamic Republic of Iran to strengthen their power. For the interests of their group, Taliban want a centralized system in all spheres of life; whether social, political, cultural, or economic.”⁵²

It seems that in recent centuries the great developments in the world, including the rise and fall of ideologies, great world wars, the establishment and expansion of international organizations, the development of public and private international laws, the expansion of economic relations, people's access to modern and complex technologies, business, communication, media and international trade, etc., have not yet been able to create a comprehensive insight in Islamic political knowledge. Now by taking into consideration the complexities of politics and international relations in today's world, would it be appropriate to accept the criterion of being a leader of the Muslim community is only that a person should be equipped with religious knowledge and some other characteristics that are mentioned for the Amir? Furthermore, the condition of masculinity of the head of the Emirate and lack of participation of community members, including women, in the formation of the Ahlu al-Hall *wal*-'Aqd Council, which has the responsibility of identifying and appointing the Amir, are among other things that are not compatible with the reasonable mechanisms of today's world. The theory of establishing the Emirate based on triumph has also caused the continuation of violence, destruction and killing of millions of people throughout history. Therefore, can the declaration of submission and obedience of a small group named as Ahlu al-Hall *wal*-'Aqd Council appoint a person as the leader of the Muslim community under the title of ‘Pledge of Allegiance’ ensure the active participation of all people in community affairs? In addition to that, religious and historical evidence show that in the Qur'an and Sunnah of the Prophet of Islam, no special method has been recommended for appointing the Imam of the Muslim community. The experience of Muslims after the death of the Prophet of Islam and the repetition of this experience in various forms after the death or killing of Islamic caliphs have reminded us of different methods that cannot go against new experiences in this regard. According to the well-known jurisprudential rule (Al-Aslu fil ashya al-ibahah) that means that everything is permissible unless it has been clearly declared as prohibited by Sharia, there is no problem in choosing other appropriate ways that can lead to the creation of a healthy political system in society. However, the author of the book “Islamic Emirate and its System” clearly rejects election on the grounds that there is no Islamic reason for it, or that the companions of the Prophet did not implement it, and that it is

⁵¹ D. A. Ahmadi, telephone communication, April 2023

⁵² Q. Rahmani, interview communication, May 2023

part of the Western democratic system, or that it causes deception and false promises by candidates; for these reasons, he does not consider it worthy of Muslims.⁵³

In recent years, several Islamic scholars have made statements on the integration of religion, elections and democracy: Sheikh Qaradawi's words in this case are worthy of consideration, he says: "When we look at the election and voting system, in fact, from an Islamic point of view, it is like testifying to the eligibility and capability of a candidate. Those conditions that must exist in a candidate."⁵⁴ Nevertheless, Qaradawi rejects the complete compatibility of the democratic system with the Islamic governance system, but he is of the opinion that democracy prevents the centralization of unlimited power in the hands of a ruler, and this is something that Islam is also in favor of.

Qardawi believes that when it comes to women's candidacy for positions such as prime minister, head of state, or parliamentary representation, leadership in government and state apparatus is no longer the duty of one individual. He argues that modern governments are led by various administrations, not by a single person. Therefore, whenever a woman assumes a position of power, she effectively leads an institution and, through collaboration with other members of this institution, can advance it. Examples of women's leadership in Islamic countries support this assertion.⁵⁵

Ahlu al-Hall wal-'Aqd Council

The book "Islamic Emirate and its System" mentions the following verses from the Holy Quran and considers this 'Council' as one of the components of the Islamic governance system:

«فَبِمَا رَحْمَةٍ مِّنَ اللَّهِ إِنَّكَ لَأَنْتَ لَهُمْ رَسُولٌ وَ لَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لَانفَضُّوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ»

Translation: So by mercy from Allah, [O Muhammad], you were lenient with them. And if you had been rude [in speech] and harsh in heart, they would have disbanded from about you. So pardon them and ask forgiveness for them and consult them in the matter. And when you have decided, then rely upon Allah. Indeed, Allah loves those who rely [upon Him].⁵⁶

The following verse is also mentioned:

«وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ»

Translation: And those who answer the Call of their Lord [i.e. to believe that He is the only One Lord (Allah), and to worship none but Him Alone], and perform As-Salat (Iqamat-as-

⁵³ Ishaqzai, A. H. (2022. P.74). *The Islamic Emirate and its system: [al-Imarat al-Islamiyat wa-Manzumatuha]*. Darul Uloom al-Sharia

⁵⁴ Qardhawi, Y. (1993). *Fiqh al-dawlah fi al-Islam*. Publisher. p. 138.

⁵⁵ Qardhawi, Y. (Year). *Fiqh al-dawlah fi al-Islam*. Publisher. p. 161

⁵⁶ Quran,, Surah Al-Imran, verse 159 <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

Salat), and who (conduct) their affairs by mutual consultation, and who spend of what We have bestowed on them.⁵⁷

In the first verse, God instructs His prophet to consult with his companions in matters. The author, citing Ibn J,⁵⁸ writes: "God Almighty commanded His prophet to consult with his companions on issues such as war, strategies, and enemies' deceit, as this leads Muslims to learn not to divide into different groups after the prophet's time and resolve disputed matters through consultation." In the last verse, God defines Muslims as people who consult with each other in their affairs, among other qualities.

Different opinions have been expressed by Islamic jurists regarding whether the council should be convened in certain matters and to what extent the implementation of its decisions is obligatory or non-obligatory. Various views have been articulated by Islamic scholars on this matter in the book. The prevailing opinion is that the decisions of the council are obligatory. Another view is that the resolutions of the council are not obligatory for the ruler, but he can extract the truth from among the different opinions.

The book "Islamic Emirate and its System" mentions the role of the Council, which it refers to it as the "Ahlu al-Hall *wal*-'Aqd Council", in two important issues: one is the recognition, appointment, and pledge of allegiance to the Imam or Amir; the second is providing advice to the Amir.

Contrary to conventional legislative assemblies in democratic systems, the Ahlu al-Hall *wal*-'Aqd council is entirely male-dominated. Its members must possess specific qualifications including piety, trustworthiness, expertise in Islamic religious knowledge, and justice. Unlike parliaments in democratic systems, this council does not make decisions based on a majority vote. It only consults on matters not explicitly addressed in Sharia texts and compatible with the spirit of Sharia and relevant to the community's interests. In the council's deliberations, the principle of majority rule is not observed; rather, any decision that aligns with Sharia is adhered to, even if it contradicts the opinions of the majority of council members.

The author of the book argues that women are not permitted to participate in this council because the participation of women in the meetings of the Ahlu al-Hall *wal*-'Aqd Council for the pledge of allegiance to the caliphs after the death of the Prophet of Islam has not been proven; therefore, they cannot participate in the decision of the pledge of allegiance. Similarly, he does not agree with the participation of women in the meetings of the Ahlu al-Hall *wal*-'Aqd Council because it is not permissible for women to mix with men in the community, as the verse of the Holy Qur'an says: "And abide in your houses";⁵⁹ as it has been decreed regarding the wives of the Prophet of Islam that they should stay at home, other women should not go out without necessity.

⁵⁷ Surah Ash-Shura, verse 38 <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

⁵⁸ Abu Jafar Mohammad Ibn Jurair Tebari one of the Sunni scholars (839-923)

⁵⁹ SurahQuran. (n.d.). [Al-Ahzab 33:33]. surahquran.com. from <https://surahquran.com/aya-33-sora-33.html>

The author's argument about the lack of permission for public participation in the meeting of the council is that ordinary people are not religious scholars, and based on the verse of Qur'an that says, "Are those who know equal to those who do not know?",⁶⁰ only scholars of the Islamic Ummah have the right to make decisions about the public.

Contemporary Islamic scholars such as Yusuf Qaradawi argues that:

Firstly, women are equal to men in all social responsibilities, including the propagation of virtue and prevention of vice, because the Qur'an addresses both men and women.

Secondly, the Quranic verse regarding the wives of the Prophet, which commands them to stay in their homes, is a specific command for them and does not apply to all women.

As exemplified by the leadership of Aisha, the wife of the Prophet, who led a battalion in the Battle of Jamal, providing a remarkable example of women's leadership roles in religious contexts.

Thirdly, the majority of scholars in Islamic societies agree that women leaving their homes for education and work in society, under appropriate manners and conditions, is permissible. Today, the presence of women in society is necessary. The confinement of women to the home was only prescribed in the era when Islamic law had not yet been fully established, and it was specifically for women who committed immoral acts.

« وَاللّٰتِي يَأْتِيْنَ الْفَاحِشَةَ مِنْ نِّسَائِكُمْ فَاَسْتَشْهَدُوْا عَلَيْنَهُنَّ اَرْبَعَةً مِّنْكُمْ فَاِنْ شَهِدُوْا فَاَمْسِكُوْهُنَّ فِي الْبُيُوْتِ حَتّٰى يَتَوَفَّاهُنَّ الْمَوْتُ اَوْ يَجْعَلَ اللّٰهُ لِهُنَّ سَبِيْلًا)

Translation: Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way.⁶¹

So how can this wrong attribute be related to Muslim women forever and how can they be restricted to their houses?⁶²

Contemporary Islamic scholars have expressed their views on the Quranic verse previously mentioned, which discusses the inequality between scholars and non-scholars. They believe that this verse merely emphasizes the virtue of knowledge and scholars, rather than suggesting that the decision-making authority for the fate of ordinary people should be exclusively entrusted to religious scholars. Islamic jurisprudence clarifies that individuals who act on behalf of others can explain issues related to representation. Women in Islamic law have full legal capacity to represent and act as equal members of society with men. On the other hand, the lack of involvement of ordinary people in important matters concerning their destiny, in today's world, is unjustifiable. Therefore, as stated, the Ahlu al-Hall wal-'Aqd council, based on the qualifications and conditions proposed in the Islamic political system, will not solely address the complex and diverse needs of modern societies through the membership of a group of religious scholars. The participation of representatives of non-Muslim minorities in such councils is also subject to debate, and contemporary Islamic scholars like Qaradawi consider

⁶⁰ Qur'an. Surah Az-Zumar, verse 9. <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

⁶¹ Qur'an. Surah An-Nisa, verse 15. <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

⁶² Al-Qaradhwai, Y. (2001). *Fiqh al-dawlah fi al-Islam* (pp. 162-163).

the presence of minority representatives permissible for advocating their rights in an Islamic society.

Independent Sharia-based Judicial System

Establishing an independent judicial system based on the implementation of Islamic Sharia is one of the key topics in the book “Islamic Emirate and its System.” Furthermore, it is a collective duty upon Muslims to have an independent judicial system in the Islamic system and it is necessary for the Imam or the leader of the Muslim community to appoint judges to ensure justice. In addition to that, the sources of rulings in the judiciary from the time of the Prophet of Islam up to the time of the Ottoman Caliphs are also stated in this book, which relies on the Qur'an, Sunnah, Ijma (consensus), Qiyas (analogy) and other sources of Islamic jurisprudence.

According to the author of the book, the judicial system in Islam is a completely male dominated system and a woman cannot be a judge. However, according to the Hanafi School of thought, women can judge in matters other than Hudud⁶³ and Qisas (Death Penalty).⁶⁴ According to Jurir Ibn Ahmad al-Tabari, women have the right to judge in all matters.⁶⁵

After the return of the Taliban to power, the following changes in the judiciary system of Afghanistan have occurred:

- Dismissal of all professional judges of the former republic government who had higher Sharia and legal education and their number reached 2000, including, 300 female judges.
- Appointment of mullahs instead of previous professional judges.
- Abolition of Elimination of Violence against Women (EVAW) courts, specialized juvenile courts, anti-corruption courts, and courts for crimes against internal *and* external security.
- Abolition of Attorney General's Office which helped the judicial system in investigating crimes and filing lawsuits.
- Ignoring the position of defense lawyers and imposing restrictions on their work.
- Issuing rulings based on various Sharia sources (texts, fatwas, and interpretations).
- Delay in judicial proceedings and processing of files.
- Lack of professional and legal knowledge, discriminatory treatment of judges and courts towards women and religious minorities, torture and forced confessions, arbitrary arrest, lack of impartiality of judges and courts, lack of access to defense lawyers, implementation of humiliating and inhumane punishments, existence and intervention of institutions that monitor people's actions, such as intelligence department and the Ministry of propagation of virtue and prohibition of vice are among the major challenges of the judicial system.

⁶³ Law Insider. Hudud. Available at <https://www.lawinsider.com/dictionary/hudud>

⁶⁴ Definitions.net. Qisas. <https://www.definitions.net/definition/qisas>

⁶⁵ Islamic legislation, Dr. Sobhi Mahmassani

- Uncertainty on recognition of documents and mechanisms of human rights and international justice, such as the International Criminal Court (ICC), due to the lack of acceptance of the jurisdiction of institutions outside the jurisdiction of the Islamic system, is also one of the major issues that the existing judicial system in Afghanistan has an unclear position about it.

Position of Women, Ethnic and Religious Minorities

The author believes that the role of women in the appointment of Amir and political affairs is not permissible in Sharia. According to him, ordinary people and women do not have the right to participate in the Ahlu al-Hall *wal*-'Aqd Council to pledge allegiance or give advice. The reasons he gives in this context are based on the differences between religious scholars and common people, as well as the lack of permission for women to mix with men in Sharia law. Moreover, on page 242 of his book “The Islamic Emirate and its System”, he condemns modern education, and subsequently, on page 249, he forbids coeducation for boys and girls. In general, the author's approach to women includes a combination of Islamic narratives while taking Afghan customs and traditions into consideration. This is even though the Qur'an addresses both men and women and, as far as legal capacity is concerned, there is no difference between them from a Sharia point of view because according to Sharia women, like men, have the authority of their personal and financial affairs and can work to improve their lives. Knowledge of religious sciences is a virtue and intellectual asset, but it cannot challenge the principle of humanity, which is the equality of human beings in human dignity, and neither can it create privileges only for religious scholars and discriminate against ordinary people in their most important social and political issue, which is the appointment of a leader.

Nevertheless, modern jurisprudential views do not accept these justifications. One of the Islamic scholars, who has teaching experience at Kabul University and has been living outside of Afghanistan after the Taliban rule, says the following: “Today's world is several centuries distant from the time when the theories of Islamic governance were proposed by classical Islamic scholars, such as Mawardi and others, and there have been many developments and improvements. For instance, General International Law, international organizations and covenants, economics and trade, and global information, etc. The solutions for implementing the Islamic governance system must be compatible with the conditions of the present age, and this is something that Haqqani's book cannot answer. In addition to that, this book shows the author's point of view about his intended system, but its structure is not clearly understood.”⁶⁶

One of the professors of Islamic studies and sociology, who still teaches inside Afghanistan and has read the book, expresses his opinion as follows: “For those who do not have deep Islamic knowledge, the book of Islamic Emirate and its System may give a general understanding of the events and historical issues of Islam in relation to governance, however,

⁶⁶ Afghan Islamic scholars interviewed for research, April 2023

it has not been able to provide a stable and applicable governance framework for the present era at all. For example, in today's world, the prevailing view in international human rights documents and world politics is based on the equality of human beings; whereas, according to the book of Islamic Emirate and its System, the only people who have Islamic knowledge have the authority to make decisions for the rest of the Muslims. Moreover, he does not consider women equal to men in politics and society which raises questions.”⁶⁷

Customs and Traditions (Urf)

The author wants to challenge the twenty years of achievements of the Afghan people in various political, social, legal, cultural, and other fields under the title of Western traditions that should be abolished. The author on page 39 writes that: "The customs and traditions that were brought from the west during the time of the US presence in Afghanistan are not the customs and traditions of Afghans so they must be abolished and eliminated because it is against the Sharia and it is in conflict with the nature of the people of Afghanistan and the customs and traditions that they have lived with in the past or will live with in the future.”⁶⁸ Hence, this kind of justification will be extremely dangerous for phenomena that have grown in Afghanistan in the last twenty years, such as freedom of expression, civil activities, political parties, artistic developments, and modern academic structures, like, institutions, universities and other educational programs. For this reason, strict measures to remove and suppress these institutions and phenomena have continued since the Taliban regained power and this has happened although the constitution and other laws of Afghanistan during the republic period did not allow any act against religious values.⁶⁹

Mr. Mujeeb Khlalwatgar, who is one of the well-known media activists of Afghanistan, regarding the above issue, says: “According to me as an ordinary Muslim, not an expert in religious issues, all the mentioned freedoms are available in Islam. There are many narrations regarding this from the Prophet of Islam and the rightly caliphs, which legitimize both the freedom of speech and the other mentioned values. However, according to me, there are two issues due to which the Taliban do not comply with the recognition of these freedoms: First, the Taliban generally do not have the necessary knowledge of religion, and the awareness of the Taliban about the religion of Islam is very basic and at the level of a madrasa. Secondly, the Taliban are more than a religious movement, they are an ethnic-ideological movement and are related to the ethnic-ideological agenda rather than religious values.”

He continues regarding the role and need of institutions and civil activities: “I believe that such institutions are necessary for a society to reach its self-awareness, growth and development; regardless of, whether the society is Islamic or non-Islamic because such institutions existed in Afghanistan before and played a major role in the development of the society.”

⁶⁷ Afghan University Professors interviewed for research, Kabul, May, 2023

⁶⁸ Ishaqzai, A. H. (2022, P.39). *The Islamic Emirate and its system*: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia.

⁶⁹ Islamic Republic of Afghanistan. (2004). Constitution of Afghanistan, Article 3.

According to the researcher, the writer's intention regarding 'Urf' (custom) is indeed to portray the customs and prevalent practices of the Pashtun noble tribe in Afghanistan, which he wants to imbue with religious color and enforce their observance upon all Afghan people, even though this itself contradicts the definition of 'Urf'. According to the definition of 'Urf', any custom that is widely practiced among a community and does not conflict with Sharia is to be observed. In this regard, the writer has turned a blind eye to the customs of other ethnic groups in Afghanistan, such as the Tajiks, Uzbeks, Hazaras, and others, because later, he defines the Pashtuns as one of the majority and important ethnic groups in Afghanistan. While the customs and traditions of the Afghan people regarding clothing, cultural celebrations, and other aspects have existed for thousands of years, and rulers in different periods of history have not opposed them, it is believed that the author's goal in the book is to oppose the phenomenon promoted by a democratic system in the past twenty years. These include girl's education, women's working in offices, women's participation in civil, political, economic, social, and cultural activities, wearing modern clothing, using cosmetics, listening to music, having civil society groups and a national human rights institution, right to freedom of expression, elections, and other components of democracy, which he seeks to label as undesirable customs and aims to eliminate and prohibit them for Afghans under the brand of Islamic Sharia.

Part Two:

Decrees, Edicts, and Instructions of the Taliban's Leader

Position of Decrees in Afghanistan's Legal System

Afghanistan's legal system is codified, relying on various resources in the past. These encompass the Islamic religion, the constitution, enacted legislative documents, the fundamental tenets of the country's policy, treaties, international agreements, and other affiliated international law documents. Secondary sources contributing to the legal framework in Afghanistan included community traditions and legislative documents from other Islamic countries, which were utilized in the lawmaking process.

The experience of the Taliban's previous government and the current two years indicate that the Taliban's approach to lawmaking is exclusively grounded in Islamic Sharia, jurisprudence

texts and interpretations, and Fatwas from Islamic scholars, adhering to the Hanafi Jurisprudence.

According to the former government's Law on Procedures for Publishing and Enforcing Legal Documents, various legislative documents in Afghanistan include the constitution, ordinary laws, legislative decrees, the national budget document, the law outlining the job description of the parliament, regulations, by-laws, procedures, bills and annexures, treaties, international agreements, and other international law documents to which Afghanistan is affiliated.⁷⁰

According to Afghanistan's legal system in the past, each of the legislative documents underwent a specific process, from drafting to approval by the respective legal authorities. The constitution required approval based on specific requirements, necessitating endorsement by the Loya Jirga. Ordinary laws had to be approved by both the lower and upper houses of the parliament. The Council of Ministers held the authority to approve regulations, while bills were within the purview of ministers for approval. By-laws were often approved by the general assembly of official and private organizations. The legislative decrees were considered a particular type of legal document in Afghanistan, which is a collection of legal and binding rules that the government could develop and endorse by the president during the off-season of parliament and in case of urgent needs based on article 79 of the former constitution. These decrees should have been provided to the parliament's first meeting and the parliament given the option to approve or reject them. The legislative decrees comprise one of the smallest parts of the legislative documents in Afghanistan.

Decrees, Edicts, and Instructions of Taliban's Leader

The issuance of decrees by the government leaders in Afghanistan goes back to the time of the government of the Khalq⁷¹ and Parcham⁷² Parties (1978-1992). The issuance of the decrees in the absence of a constitution at that time, particularly regarding the distribution of the people's private land to the farmers and the issue of marriage dowry, made people unsatisfied, and they started to protest the pro-Soviet Union regime.

The Taliban also issued decrees and approved some laws and bills in their first ruling period, 1996-2001. Some of the approved laws of the Taliban were even used during the republican government. About 96 laws, 140 decrees, 91 regulations, 81 edicts, more than 45 instructions

⁷⁰ The Law on Procedures for Publishing and Enforcing Legislative Documents. Official Gazette, 1246.

⁷¹ Means People. It was a branch of Afghanistan communist party.

⁷² Means Flag. It was another branch of Afghanistan communist part.

and messages and about 113 by-laws were issued, approved, and published in the official gazettes no 783 to 799 during the first period of the Taliban ruling.⁷³

The issued decrees by the former Taliban leader share similarities with the topics and texts found in the decrees issued by the current Taliban leader, Mullah Hibatullah, over the past two years. A notable distinction between the former and current laws and decrees lies in the increased use of references from Sharia sources, including Qur'an texts, Sunnah, jurisprudence books, interpretations, and Fatwas. This marks a departure from previous practices. The explicit referencing of articles in the decrees and laws to Sharia sources indicates the Taliban's recognition of Hanafi jurisprudence as the exclusive foundation for legislation.

The current Taliban government has officially published 39 decrees, 30 edicts, and 8 instructions, encompassing various regulations and laws in the official gazette. The compilation of the Taliban leader's decrees and edicts was featured in the official gazettes numbered 1424 on December 5, 2022, 1432 on May 22, 2023, and 1434 on July 11, 2023. However, there is speculation that the published collection may not encompass all decrees, edicts, and instructions issued by the Taliban leader. Notably, certain legislative documents, such as the Ministry of Economy's procedures regarding restrictions on women's employment in national and international organizations, constraints on women's higher education, and education for girls above grade 6, along with some other restrictions, are absent from the published materials.

These decrees do not reflect the suspension of the political parties and the revocation of thousands of civil society organizations' licenses. Some of these decrees were in practice before the fall of the republic government. The Taliban had a parallel government against the republic government at that time. Some of these decrees, which were issued after the Taliban recaptured power, are regarding land and state-owned properties grabbing, restitution of grabbed lands, establishing order in the ranks of the Taliban, women's marriage and heritage, treatment of prisoners, keeping the confidentiality of the documents, missing people, book printing by the commissions and administrations of Taliban, the authority of the martial courts, Sharia Hijab, and other issues. One of these legislative decrees is about changing the former Attorney General's Office to the "General Directorate for Monitoring and Follow-up of decrees and edicts of the Taliban Leader."⁷⁴

⁷³ Ministry of Justice, Islamic Republic of Afghanistan. (n.d.). Official Gazettes 783-799. Available at <http://old.moj.gov.af/Content/files/index.htm>

⁷⁴ Afghanistan Analysts Network. (2023, July 15). *From land grabbing to haircuts: The decrees and edicts of the Taliban supreme leader*. <https://www.afghanistan-analysts.org/en/reports/rights-freedom/from-land-grabbing-to-haircuts-the-decrees-and-edicts-of-the-taliban-supreme-leader/>

The former laws, regulations, and bills have been officially declared revoked by the Taliban. However, the routine of the official and non-official administrations and organizations is still run according to the former laws and regulations.⁷⁵

We can classify the Taliban's leader's decrees, edicts, and instructions into the following six categories:

1. Decrees and edicts for consolidating the power of the Taliban leader;
2. Decrees and edicts on Judiciary affairs;
3. Decrees and edicts on filling the lack of the former legislations and managing the legal affairs;
4. Decrees and edicts on the prevention of land usurpation and property-related issues;
5. Decrees and edicts to facilitate public affairs with the government;
6. Decrees and Edicts on Women.

Decrees and Edicts for the Strengthening of the Taliban Leader's Power

A total of 23 decrees, edicts, and instructions, including a law, have been issued to enhance the power and influence of the Taliban's leader across all Emirate organs. These decrees, edicts, and instructions are as follows:

1. Decree No. 32 dated March 21, 2023, endorsing the Law on the duties and authorities of the General Directorate for Monitoring and Follow-up of decrees and edicts of Taliban Leadership (Official gazette no 1434).
2. Decree No. 35 dated May 7, 2023, involves the transformation of the former Attorney General's Office into the "General Directorate for Monitoring and Follow-up of decrees and edicts of Taliban Leadership" (official gazette no 1434).
3. Decree No. 12, dated May 17, 2023, amending and adding Article 1 of the preceding decree issued on November 21, 2022, regarding the establishment of the Security and Screening Commission (Official Gazette No. 1434).
4. Decree No. 23 dated April 5, 2017, emphasizing the cooperation of Emirate officials with the Department of the Propagation of Virtue and the Prevention of Vice (1432).
5. Decree No. 43 dated May 6, 2017, addressing the issue of 'implanted' people (1432).
6. Decree No. 46 dated May 6, 2017, prohibiting indecency and profanity in the media, communications, and letters (1432).
7. Decree No. 47 dated May 15, 2017, regulating the use of official seals (1432).
8. Edict No. 31 dated Feb 21, 2019, concerning office equipment and Emirate-owned tools (1432).

⁷⁵ United Nations Assistance Mission in Afghanistan. (2022, June). *Human rights in Afghanistan report - June 2022*. United Nations. https://unama.unmissions.org/sites/default/files/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf

9. Instruction No. 48 dated June 21, 2019, imposing restrictions on the length of Taliban members' hair (1432).
10. Edict No. 36 dated Dec 7, 2019, prohibiting the dissemination of decrees, edicts, official letters, and confidential documents of the administrations on social media platforms (1432).
11. Edict No. 61 dated Feb 4, 2020, allowing the printing of books by the departments and commissions of the Emirate (1432).
12. Decree No. 124 dated June 18, 2021, on the dissolution of general fronts (1432).
13. Decree No. 22 dated Jan 19, 2022, on ministries reporting to the relevant acting Prime Minister's deputies (1432).
14. Decree No. 35 dated June 18, 2022, preventing false accusations against the employees and officials of the Islamic Emirate (1432).
15. Edict No. 1407 dated March 6, 2022, on handing over supplies and vehicles by redeployed officials to their replacements (1432).
16. Edict No. 631 dated May 10, 2022, prohibiting double salaries (1432).
17. Edict No. 2074 dated May 17, 2022, banning the registration and appointment of mujahedin to the security agencies (1432).
18. Edict No. 115 dated May 17, 2022, prohibiting monitoring and follow-up measures for Instructions of leadership during the past year (1432).
19. Edict No. 2687 dated Jul 6, 2022, banning the holding of second jobs while employed in one of the administrations (1432).
20. Instruction No. 76 dated Dec 1, 2021, on the appointed representatives for Taliban Security and Screening Commission (1432).
21. Decree No. 12 dated Nov 21, 2021, on the formation, duties, and powers of the Security and Screening Commission (1432).
22. Decree No. 30 dated March 17, 2023, on transparency in procurements and contracting (1432).
23. Edict No. 2687 dated Oct 3, 2022, on the approval of the establishment of a National Procurement Commission (1432).

Decrees and Edicts on Judiciary Affairs:

1. Instruction No. 82 dated June 1, 2016, directed to the General Directorate of Courts regarding the decrees and bills of the former leader of the Taliban (1432).
2. Decree No. 49 dated May 6, 2017, addressing the requirement for leadership approval for Hudud and Qisas punishments (1432).
3. Decree No. 19 dated Nov 28, 2021, specifying the jurisdiction of military courts (1432).
4. Edict No. 1691 dated Apr 3, 2022, concerning the assignment of moon-sighting delegations (1432).
5. Edict No. 65 dated Nov 2, 2020, prohibiting punishment and filming [the scene] without a court order (1432).

6. Edict No. 2219 A dated May 27, 2022, outlining the composition of the command for the Implementation Force of military courts (1432).
7. Edict No. 2219 B dated May 27, 2022, addressing the merge of military courts into the structure of the Supreme Court (1432).
8. Instruction No. 302 dated Feb 5, 2022, pertaining to the scheduling of weekly sessions for the Supreme Court (1432).
9. Edict No. 932 dated Oct 24, 2022, on the transfer of the Department of Law from the Ministry of Justice to the Supreme Court (1432).
10. Edict No. 1215 dated Nov 15, 2022, on the dissolution of the organizations, departments, and legal and judicial centers of the Department for Fighting Against Serious Administrative Corruption (1432).
11. Edict No. 1557 dated Dec 15, 2022, concerning the dissolution of military courts within the Ministry of National Defense (1432).
12. Edict No. 1820 dated Jan 2, 2023, addressing the proceedings of cases by courts (1432).

Decrees and Edicts on Filling the Lack of Former Legislations

1. Decree No. 43 dated Dec 7, 2019, addressing missing persons (1432).
2. Decree No. 5 dated Oct 4, 2022, concerning missing Mujahidin and other persons (Official Gazette 1424).
3. Decree No. 5 dated Oct 24, 2022, on processing official documents (Official Gazette 1424).
4. Decree No. 9 dated Oct 24, 2022, on processing legislative documents (Official Gazette 1424).
5. Decree No. 10 dated Oct 31, 2022, on processing official documents (Official Gazette 1424).
6. Decree No. 10 dated Oct 31, 2022, on the criminal decisions, warrants, and prosecution of the courts, prosecution offices, and intelligence organs of the former government (Official Gazette 1424).
7. Decree No. 43 dated May 31, 2023, on the establishment of an independent commission for the final revision of legislative documents (Official Gazette 1434).
8. Decree No. 8 dated Nov 4, 2019, on the initial detention period of accused individuals (Official Gazette 1432).
9. Edict No. 1409 dated March 6, 2022, on Istifta (asking for religious opinion) (Official Gazette 1432).
10. Edict No. 1441 dated March 9, 2022, on placing all specializations in jurisprudence and fatwa issuance under the Ministry of Higher Education (Official Gazette 1432).
11. Instruction No. 215 dated Feb 5, 2022, on the procedure of Defense Attorneys (Official Gazette 1432).
12. Instruction No. 427 dated March 15, 2022, on approving the curricula for the first and second semesters of higher education (Official Gazette 1432).

13. Decree No. 25 dated Feb 13, 2022, on the validation of assessed academic documents of religious madrasa graduates and the Ulema (Official Gazette 1432).
14. Edict No. 2070 dated May 17, 2022, on aligning financial affairs within the financial system of the Central Bank and Ministry of Finance (Official Gazette 1432).
15. Edict No. 2071 dated May 19, 2022, on the collection of revenue in a transparent manner (Official Gazette 1432).
16. Edict No. 2072 dated May 17, 2022, on activating idle revenue-generating sources (Official Gazette 1432).
17. Edict No. 2073 dated May 17, 2022, on the alignment of salaries in the armed forces (Official Gazette 1432).
18. Decree No. 29 dated March 15, 2022, on the authority to imprison and the period of detention for accused persons (Official Gazette 1432).
19. Edict No. 778 dated Oct 10, 2022, on the delegation of monetary authority to budgetary organizations (Official Gazette 1432).
20. Edict No. 1216 dated Jan 2, 2023, on the dissolution of the general directorate of the municipalities (Official Gazette 1432).

Decrees and Edicts on the Prevention of Land Usurpation

1. Decree No. 3 dated Oct 3, 2022, on the commission for the prevention of land usurpation and restitution of usurped lands (1424).
2. Decree No. 4 dated Oct 3, 2022, on the enforcement of the regulation for the prevention of land usurpation and restitution of usurped lands (1424).
3. Decree No. 6 dated Oct 10, 2022, on the distribution of land plots for Takhar IDPs (1424).
4. Decree No. 45 dated May 6, 2017, on state-owned lands (1432).
5. Decree No. 44 dated May 6, 2019, on the illegal taking of private lands (1432).
6. Decree No. 4 dated Sep 22, 2021, on the prohibition of the usurpation of Emirate-owned lands (1432).
7. Decree No. 8 dated Oct 23, 2021, on the prohibition of transferring the ownership of Emirate-owned lands without the approval of the Taliban's leader (1432).
8. Decree No. 31 dated March 17, 2023, on the prohibition of Emirate-owned lands distribution and sale (1432).
9. Edict No. 1796 dated April 13, 2022, on the transfer of the Land Department from the Ministry of Urban Development to the Ministry of Agriculture, Irrigation, and Livestock (1432).

Decrees and Edicts to Facilitate Public Affairs

1. Decree No. 41 dated May 27, 2023, on convenient services for visitors in Emirate organs (Official Gazette 1434).

2. Edict No. 2234 dated Jan 29, 2023, on the prevention of drug addiction and treatment of drug addicts (Official Gazette 1432).
3. Edict No. 1336 dated Feb 26, 2022, on collecting the poor in Kabul city and providing them with assistance (Official Gazette 1432).
4. Decree No. 29 dated March 17, 2023, on banning hashish cultivation (Official Gazette 1432).
5. Decree No. 31 dated April 5, 2022, on banning narcotic cultivation (Official Gazette 1432).
6. Decree No. 85 dated June 25, 2016, on captives (Official Gazette 1432).
7. Instruction no 86 dated July 10, 2016, for the people issued security letters (Official Gazette 1432).
8. Instruction No. 87 dated July 10, 2016, on accepting government soldiers who have switched sides, even if they bring no weapons with them (Official Gazette 1432).
9. Decree No. 9 dated Nov 4, 2019, on the proper treatment of prisoners (Official Gazette 1432).
10. Decree No. 28 dated March 14, 2022, on Mujahidin following moral values (Official Gazette 1432).
11. Decree No. 30 dated March 20, 2022, on forbidding ‘cronyism’ in public recruitments (Official Gazette 1432).

Decrees and Edicts on Women

1. Decree No. 83 dated Dec 2, 2021, on women’s marriage and heritage (Official Gazette 1432).
2. Edict No. 1930 dated April 25, 2022, on the endorsement of the descriptive and explanatory draft related to Sharia hijab (Official Gazette 1432).

It is worth mentioning that most of the actions taken by the Taliban against women have not been based on the instructions that are published in the written decrees, instructions, and edicts of the Taliban’s leader. Around 86 actions have been taken so far.⁷⁶

Decrees, Edicts, and Instructions Restricting Civic Space

Some of the decrees, edicts, and instructions issued by the Taliban's leader have directly or indirectly imposed additional restrictions on the civic space and human rights of the Afghan people. The key decrees in this context are as follows:

1. Decree No. 35, dated July 18, 2022, published in the official gazette No. 1432 concerning the prevention of false accusations against the employees and officials of

⁷⁶ United States Institute of Peace. Tracking the Taliban's mistreatment of women. <https://www.usip.org/tracking-talibans-mistreatment-women> (Accessed December 2022)

the Islamic Emirate, along with prosecution and punishment for the perpetrators. New instructions from the Taliban's leader based on this decree aim to curb false accusations against the employees and officials of the Islamic Emirate. Criticism, "without facts and insulting religious scholars and government employees," whether "through speech or other means," is deemed punishable. These instructions have resulted in the suppression of people and media criticism against the employees and officials of the Islamic Emirate, leading to the arrest, torture, and imprisonment of some mass media activists who criticized the Taliban, as reported by human rights organizations. This decree is grounded in Islamic Fatwas, prescribing Tazir⁷⁷ punishment for the offenders.

2. Edict No. 61, dated February 4, 2020, published in the official gazette no 1432, pertains to the printing of books by the departments and commissions of the Emirate, emphasizing the necessity for approval and review by the Taliban leadership. According to this edict, the departments and commissions of the Emirate are restricted from preparing and printing instructional books without the explicit approval of the Taliban's leader.

The tradition of printing informative books for Taliban officials traces back to the initial period of the Taliban's rule, during which all bills and laws pertinent to the ministries were compiled within a specific book. This compilation was then submitted to the minister or the designated authority of the respective ministry or organ to facilitate the adjustment of related affairs. During that time, the laws of previous regimes were scrutinized by Taliban scholars, and the instructional books incorporated the effective laws of the previous period. However, in the present context, the laws of the former government are no longer effective. Hence, the mandatory approval of the Taliban's leader for such informative books underscores his significant power and control over all affairs within the Emirate departments.

3. Decree No. 65, dated Nov 2, 2020, published in the official gazette no 1432 regarding prohibiting punishment and filming [the scene] without a court order. This decree restricts the people and media from filming, photographing, and publishing punishment in public places, such as Hudud and Qisas implementation and other punishments which the Taliban implement in the different parts of Afghanistan from time to time. This decree violates the citizens of Afghanistan's right to access information. Through its implementation, the Taliban tries to conceal from the eyes of the people of Afghanistan and the world the implementation of disdainful and inhumane punishments that are not compatible with the values of human rights and fair, independent, and impartial court mechanisms. This decree expands the continuation of inhuman punishments implementation, horror, and fear of Taliban policies in society.

⁷⁷ Ta'zir is a sort of punishment that is not explicitly specified In Sharia, and the specification of its type and amount is left to the Sharia ruler or the judge.

4. Edict No. 36, dated Dec 7, 2019, published in the official gazette 1432 regarding not publishing decrees, edicts, official letters, and confidential documents of the administration of Taliban on the mass media such as Facebook, Twitter, WhatsApp, Telegram, and other public groups. This decree was issued before the Taliban recaptured the power. However, it is still implemented because some edicts and directives of the Taliban leadership in various fields restricting the civic and political rights and freedoms of the people are also instructed through non-public, oral, and secret edicts as its publication through mass media and social media is troublesome for the Taliban; so, the Taliban sue the perpetrators.
5. Decree No. 43, dated May 31, 2023, published in the official gazette 1434 regarding the establishment of an Independent Commission for the revision of the former legislative documents under the chairmanship of Sheikh Abdul Hakeem Haqqani, head of the supreme court, and 6 religious Mawlawi scholars and one Mufti. The Taliban also assigned a committee under the chairmanship of the then Minister of Justice in the first period of their ruling for revision of all laws, which was effective and facilitated legal affairs in the country, but during 20 years of republican government, numerous laws were endorsed based on Afghanistan's human rights commitments. The establishment of this commission was a good step toward legality, but meanwhile was an alarm due to the revocation of most of the laws which were enacted as part of Afghanistan's human rights commitments. On the other hand, since this commission is only comprised of religious scholars and they are not familiar with the international human rights mechanisms, it seems unlikely that they can review the modern laws of Afghanistan according to contemporary requirements. Whatever the result of this revision is, it has raised concerns from human rights experts.
6. Edict No. 1930, dated April 25, 2022, endorsing the explanatory and implemental draft related to Sharia hijab, published in the official gazette 1432. This decree makes compulsory the implementation of the draft related to the Sharia hijab, which was developed by the Ministry of the Propagation of Virtue and the Prevention of Vice and provided for the approval of the Taliban's leader. According to this draft, which describes and explains the full coverage of women in the community, several organs are assigned to implement it. These organs include the Supreme Court, Ministry of Hajj and Religious Affairs, Ministry of Education, Ministry of Interior, General Directorate of Intelligence, and all preachers and Imams of the mosques. The main objective of this decree is to put women and girls under pressure in order not to have movement, not to work, and not to have free activities in the community. The participation of the judicial,

security, and intelligence organs in implementing this decree indicates its importance for the Taliban regime.

7. Edict No. 2074, dated May 17, 2022, published in the official gazette no 1432 regarding registering and appointing Taliban fighters to the security agencies. Based on this decree, all Taliban fighters shall be recruited by security organs such as the Ministry of Defense, Ministry of Interior, and General Directorate of Intelligence, and this process should be regularly reported to the leader of the Taliban. Based on the reports of human rights organizations, the current security organs use their power to suppress citizens and peaceful gatherings, and to torture and kill the security in charge of the former government, as well as media and civil activists.
8. Decree No. 12, dated 17 May 2023, regarding the amendment and addition of article 1 of this decree, which was issued on Nov 21, 2022, regarding establishing the Security and Screening Commission. Based on this amendment, the representative of the judiciary and office of the Taliban's leader is added to the membership of this commission, and selection of the members of this commission from the Ministry of Interior, General Directorate of Intelligence and Administrative Office of the Head of the Cabinet is within the authority of the Taliban's leader. The objective of this decree is to strengthen the Taliban's regime, direct control of the Taliban's leadership over this commission, and screening of the security forces. This decree gives absolute power to the Taliban's leader to act for the appointment or termination of those security forces members who are not according to his will, and he will do it directly through his representative in the commission. In addition, he can have special security forces from the Taliban fighters in hand to use them for suppression of any civic or political protest.
9. Decree No. 35, dated May 7, 2023, about changing the former Attorney General's Office to the "General Directorate for Monitoring and Follow-up of Decrees and Edicts of the Taliban Leader". Based on this decree, the former Attorney General's Office was changed to the General Directorate for Monitoring and Following up on decrees and edicts of the Taliban Leader. The amendment of the name and scope of this office changed the position of a general office of the country to a small office that is only responsible for following-up decrees and edicts of the Taliban Leader. Based on the name of this office, the law is limited to the decrees and edicts of the Taliban's leader, which is unprecedented in the history of Afghanistan's legal system. This office acts directly under the supervision of the Taliban's leader and can investigate and pressure all administrations and organizations, including NGOs and the private sector.
10. Decree No. 83, dated Dec 2, 2021, published in the official gazette no 1432, regarding women's rights. Based on this decree, the leader of the Taliban instructed all religious scholars and tribal elders to take serious action for the Sharia rights of women and girls

in the issues of marriage and heritage and justice regarding polygamists. According to this decree, widows have the authority to decide their marriage. However, these issues are not new, as they are included in the former Civil Law of Afghanistan. This decree is silent on other civil, political, and cultural rights of women, such as the right to work, education, political participation, and cultural and social rights.

11. Instruction No. 427, dated March 15, 2022, published in the official gazette no 1432, on approving the curricula for higher education's first and second semesters. Based on this instruction, the leader of the Taliban instructed that Islamic scholars committed to Islam and religion shall teach in the faculty of Sharia, and a committee of religious scholars should be formed to observe teaching in universities. In addition, it recommends the addition and amendment of some religious subjects in the curricula. This decree indicates the strategic vision of the Taliban's leader in terms of religious subjects' curricula in Afghanistani universities: to have control over the teaching of Islamic issues and strengthen religious scholars' control over higher education in Afghanistan.
12. Decree No. 32, dated March 21, 2023, concerns the endorsement of the law on the duties and authorities of the General Directorate for Monitoring and Follow-up of decrees and edicts of the Taliban Leader. This law, consisting of four chapters and 28 articles, is endorsed by the Taliban's leader. While the introduction of this law is associated with decree no. 9 dated November 4, 2019, which focuses on the proper treatment of prisoners, its application extends beyond prisoners' rights, encompassing the monitoring and evaluation of governmental and non-governmental organizations.

The legal scope of this law is specifically limited to the decrees and edicts of the Taliban's leader. Supported by Sharia reasons drawn from texts, interpretations, and fatwas of the Hanafi School, the objective of this law is to ensure compliance with and implementation of decrees, edicts, and legal documents. It aims to prevent their violation, maintain social order, protect public and Sharia rights, regulate directorate affairs, ensure transparency, prevent corruption, and maintain the independence of the office.

Article Four of this law highlights the independence of the office, emphasizing its direct accountability to the leader of the Taliban. Article Five outlines the duties of the Directorate, encompassing monitoring and follow-up on decrees, edicts, and legal documents, as well as their implementation by governmental and private sector employees. It includes auditing, decision-making on the removal or attribution of violations to offenders, clarification for non-implementation of executable documents, and taking necessary precautions.

The term "observer" replaces the previous term "prosecutor" used for members of the Attorney General's Office (AGO). "Executable documents" in this law refer to the

decrees, edicts, and instructions of the Taliban leader. The Directorate's monitoring extends to governmental administrations, the private sector, educational institutions, and NGOs.

Article 10 mandates the Directorate to address complaints expressed through social media. Additionally, the Directorate is responsible for overseeing the legality of intelligence organs' activities and supervising places of deprivation of liberty to ensure the rights of prisoners and detainees are respected. According to Article 13, the Directorate is authorized to propose amendments, revocations, or additions to legislative documents with gaps or ambiguities during the monitoring process. At the end of each year, the Directorate must provide a detailed report to the leadership of the Taliban regarding the implementation of decrees, edicts, and legislative documents. Article 22 stipulates that organs failing to enforce decrees and edicts without justification shall face prosecution.

Impact of the "Islamic Emirate and Its System" Book on the Decrees and Edicts

Throughout history, the ideological foundations of legal and philosophical schools, religions, and beliefs have significantly influenced legal and legislative systems in human societies. In civilized countries, legislation has evolved in response to social, political, cultural, and economic developments, aiming to ensure that laws meet contemporary needs and serve as a foundation for human development and progress. Within the principles of Islamic legislation, some rules acknowledge the necessity of adjusting *ijtihad* rulings based on changes in time, place, and the conditions of the people.⁷⁸

An examination of the decrees, edicts, and instructions issued by the Taliban's leader reveals the profound relationship and impact of the ideas and narratives presented in "The Islamic Emirate and its System" book on the Taliban's leader's pronouncements.

The book outlines a Utopian system for the people of Afghanistan, echoing ideas proposed by Islamic scholars such as Mawardi, Ibn Taymiyyah, Seyed Jamaluddin, Maududi, and Qaradawi under the themes of Sharia politics or the Islamic governance system at different times. Despite being articulated since its inception, these ideas have not found practical application in any geographical territory of the Muslim world to date. The core of this proposed system revolves around the complete rule and authority of the Amir over all aspects of people's lives. Allegiance to the Amir, obedience to him, the implementation of Islamic Sharia, including Hudud and Qisas, a judicial system based on Sharia, the Council of Ahl al-ḥall wa-l-ʿaql, and the imposition of social and cultural restrictions on women and religious minorities are central themes in these books. However, these concepts are in no way aligned with contemporary

⁷⁸ Mahmassani, S. (1978). *Islamic Legislation*. Tehran: Bayan

international legal requirements and mechanisms, especially those related to international human rights, advancements in science and technology, and global economic and cultural relations in the present era.

Dr. Mohammad Abed Aljaberi, a famous Arab scholar, says about Islamic political jurisprudence: “Islamic political jurisprudence was initially focused on the past; it was created to defend the caliphate of the right caliphs against the accusations of Rafideen⁷⁹ and Shia, and it was not a jurisprudence focused on the present and the future.”⁸⁰ The author of “The Islamic Emirate and its System” tries to describe the Islamic governance elements from his perspective on Afghanistan’s geography and by taking into consideration the period which he calls the occupation by foreign countries, especially the USA, and based on Sharia sources and narratives of Islam history. Imamate, allegiance, Amir’s unlimited powers and his control on all affairs of the government, a judiciary and legislative branch which is solely based on Sharia sources and the Hanafi School, the executive branch comprised of the ministers, prime minister, and Ahl al-hall wa-l-‘aqd are the main components of this system. We will examine the impact of “The Islamic Emirate and its System” on the different decrees and edicts of the Taliban’s leadership.

The Scope of Amir’s Powers and Authorities

With respect to the scope of Amir’s duties and authorities, almost all affairs are subject to his approval and endorsement. These authorities include the appointment of judges and ministers, protection of Sharia implementation, ensuring justice, releasing the lands from land grabbers, ensuring security, implementation of Hudud and Qisas, independence and territorial integrity of the country. As can be seen, the decrees and edicts in this part facilitate the execution, expansion, of dominion and unlimited sovereignty of Amir as it is explained in the Islamic Emirate book. For instance, decree No. 32 changed the former Attorney General’s Office, an essential supporter of people’s general and personal rights, to the General Directorate for Monitoring and Follow-up of decrees and edicts of the Taliban Leader. This decree is based on the principle of obedience to the Amir’s orders, which obliges all governmental organs and non-governmental organizations to obey his orders without question. Since the structure and leadership of this directorate are accountable only to the Taliban’s leader, this can guarantee the political position and superiority of this structure as a lever of pressure and the way to exercise the influence of the Taliban’s leader on the performance of all parts of the government.

⁷⁹ Rafideen is plural of Rafida that means Rejectors of the first three caliphs.

⁸⁰ Aljaberi, A. (n.d.). *Religion, State, and the Application of Sharia*. Retrieved, March 11, 2024, available at: https://foulabook.com/ar/book/%D8%A7%D9%84%D8%AF%D9%8A%D9%86-%D9%88%D8%A7%D9%84%D8%AF%D9%88%D9%84%D8%A9-%D9%88%D8%AA%D8%B7%D8%A8%D9%8A%D9%82-%D8%A7%D9%84%D8%B4%D8%B1%D9%8A%D8%B9%D8%A9-pdf#google_vignette (Accessed December 2022)

Similarly, decree No. 12 regarding the amendment of the former decree on the members of the screening commission delegated the power of appointing the members of this commission to the leader of the Taliban. This decree is another example of those decrees which, under the Islamic Emirate book, guarantee the direct control of the Amir on the appointment and termination of the security and war commanders in charge.⁸¹ Therefore, according to the historical narratives in the mentioned book, the Amir is the only commanding authority, who can appoint and terminate his military commanders at his discretion. In the first decree, which was issued in 2021 after the Taliban recaptured power, the composition and the appointment of the members of this commission were predicted without any representative of the Taliban's leader and no involvement of the Amir in appointing the members of the commission.

The amendment of this decree elevated the previous membership of the senior deputy of the Ministry of Defense to the membership of the Acting Minister of Defense, and the representatives of the Supreme Court and the Taliban's leader were also added to the members of the commission. The leader of the Taliban appoints each of the members and it implements his order and will to screen the army, ensuring it is committed to the goals of the Islamic Emirate. This commission has full authority to screen Taliban forces and remove the people against their will.

Other decrees, rulings, and guidelines of the Taliban leader in this category also focus on bringing order and forming the structure of the leadership of the cabinet, preventing accusations against officials, preserving government property and issues that ultimately lead to obeying the Amir and consolidating his power over all the system as described in the chapter of the Imam's duties in the book "Islamic Emirate and its System."

In Judiciary

Creating an independent judicial system based on implementing Islamic Sharia according to the Hanafi school is one of the critical topics in "Islamic Emirate and its System". According to this text, having a judicial system in the Muslim community is like an obligation, and the Imam or leader of the Muslim community must appoint judges to ensure justice. The sources of the judiciary from the time of the Prophet of Islam to the time of the Ottoman Caliphate are also stated in this book, which is based on the Qur'an, Sunnah, Ijma, Qiyas, and other sources of Islamic jurisprudence.

⁸¹ Ishaqzai, A. H. (2022. P.58). *The Islamic Emirate and its system*: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia

Therefore, most of the decrees and edicts of the Taliban's leader were issued regarding the reshaping and transformation of this system to create and strengthen an entirely religious structure under his direct supervision. The judicial branch has been led by the author of "the Islamic Emirate and its System", Shiekh Abdul Hakeem Haqqani, from the very first days of Taliban rule in Aug 2021.

Although numerous changes in the judicial system were implemented very quickly and outside of these decrees and edicts, the issuance of these decrees and edicts also significantly impacted the screening and transformation of the structure of the previous judicial system. The actions taken by the Taliban in the judicial system have resulted in the termination of the last professional judges and their replacement by Mullahs who graduated from Madrassas, and resulted in the termination of female judges and employees from the judiciary because women cannot be judges or have a role in the leadership of the Islamic society according to the Islamic Emirate book.

Edict No. 2219 of the Taliban leader dissolved all special courts, such as the court for elimination of crimes of violence against women, the special court for dealing with juvenile violations, the courts for fighting administrative corruption and the divisions for fighting crimes against internal and external security.⁸² In addition, the Taliban revoked all former laws, most of which were developed and endorsed under Afghanistan's human rights commitments. The decrees of the Taliban's leader are the base for the issuance of judicial decisions and sentences. There is no investigation phase in the court process as the AGO has been changed to the General Directorate for Monitoring and Follow-up of decrees and edicts of Taliban's Leader, creating a big gap. The investigation authority is delegated to the police and General Directorate of Intelligence.

Edict No. 1820, issued by the Taliban's leader, establishes a specific timeframe for the proceedings in the three courts, but has given rise to numerous challenges concerning various aspects of a fair trial. Despite the issuance of multiple decrees and edicts, human rights organizations continue to report deficiencies in the procedural framework for case proceedings. Issues persist, including the adoption of quasi-judicial procedures by irresponsible bodies, a dearth of professional and legal expertise, discriminatory practices by judges and courts against women and religious minorities, instances of torture and coerced confessions, arbitrary arrests, the existence of private prisons, partiality concerns with respect to judges and courts, limited access to defense lawyers, and the implementation of degrading and inhumane punishments. Additionally, challenges arise from the involvement of supervisory bodies, such as the Ministry

⁸² Rawadari. (2023, June 4). An examination of the legal and judicial system in Taliban controlled Afghanistan. Rawadari. Available at: <https://rawadari.org>

of Propagation of Virtue and the Prevention of Vice, in overseeing individuals' actions within the judicial system.⁸³

In legislation

Pessimism against enacted laws and their invalidity from the point of view of “The Islamic Emirate and its System” is one of the critical issues that caused the Taliban’s leader to issue numerous decrees, edicts, and instructions.⁸⁴ It is stated in this book: “It is not suitable for the Islamic Emirate except to implement the laws of the Qur'an and the Sunnah according to the ideas of the scholars of the Salaf (previous scholars) and Mujtahids which is the goal of the Jihad of the Islamic Emirate of Afghanistan, and the nature of its people also demands the execution of Islamic laws because they are from Muslim ancestors. The Mujahedeen of the Islamic Emirate once again proved the possibility of applying Sharia and Islamic belief as surrendering to imported phenomena and culture does not lead to progress and development of the nation but causes its dependence and backwardness.” Therefore, the Taliban declared the revocation of all laws that had been enacted previously. To remove the legal gap, issuing decrees, edicts, and instructions in this regard is vital for the Taliban. However, the Taliban realized that revoking the previous laws is not the solution, so the leader of the Taliban issued decree no 43 and ordered the creation of an independent commission to review the former legislative documents. Still, since all the members of this commission are religious scholars, it seems unlikely that they can consider other sources for Afghan legislation, including international human rights commitments, while reviewing these documents.

The definition of law, as stated in article three of the Law for General Directorate for Monitoring and Follow-up of decrees and edicts of the Taliban Leader, is a set of binding rules that are compiled in the framework of Sharia and approved by the competent authority to regulate the activities and internal affairs of a ministry or department. This definition has limited the scope of the law's implementation to only government departments and ministries, and considers its approval by the competent authority, which is the Amir, sufficient for its implementation. This is contrary to the custom and former method of legislation in Afghanistan. Before the fall of the republic government, numerous laws such as the constitution, civil law, media, assemblies, and dozens of other supplementary laws regulated the lives of the people in various fields of social, political, and cultural life; now, from the

⁸³ Rawadari. (2023, June 4). An examination of the legal and judicial system in Taliban controlled Afghanistan. Rawadari. <https://rawadari.org>

⁸⁴ Ishaqzai, A. H. (2022. P.22). The Islamic Emirate and its system: [al-Imarat al-Islamiat wa-Manzumatuha]. Darul Uloom al-Sharia

Taliban's point of view, these issues are regulated according to Sharia rules, and they do not see the need for legislation in these fields.

The types, and stages of drafting, approving, and endorsing laws were also different in the previous legal system. The Taliban's definition ignores this, and suggests that whatever is issued by the Taliban's leader in the form of decree, edict, instruction, approval, etc., must be implemented. The Taliban are not compatible with the term of law like their predecessor, Islamic scholars. However, it was recently raised by the Minister of Justice of the de facto government of the Taliban that the legislative department of the justice ministry has scrutinized and drafted 49 laws so far, which, after endorsement, may come into effect in the following months.⁸⁵ Meanwhile, the minister rejected the previous constitutions, called them anti-Islamic laws, and added that work on the new Islamic constitution is in progress. It indicates a change in the Taliban's approach towards legislation. However, whatever this approach is, based on this group's perceptions of Islamic Sharia as the sole source of law, regardless of Afghanistan's human rights commitments and other legislative sources, it has raised concern about the legislative method and the content of the laws under the rule of the Taliban.

Regarding Usurped Properties and Lands Restitution

The issue of usurpation, ownership, and distribution of land has been controversial and troublesome during the previous governments of Afghanistan. The Taliban also have many concerns in this regard. Therefore, the Taliban's leader has issued a series of specific decrees and edicts in this regard. According to "The Islamic Emirate and its System", restitution of property from usurpers is part of the Amir's Sharia authority.⁸⁶ By issuing these decrees, on the one hand, the leader of the Taliban wants to execute his Sharia power, and on the other hand, since influential people usurped hundreds of thousands of acres of state-owned land during the former government, this issue can be considered and supported by the people as securing public interests.

Interacting and Relationships with People

Based on the Islamic ruling system, the Amir should listen to the problems of the people and try to provide justice, security, and services for the Islamic nation.⁸⁷ The leader of the Taliban, by issuing decrees and edicts in this regard, has tried to add to the plans of Emirate the fight against ominous social phenomenon such as the cultivation of poppy and hashish, a large

⁸⁵ BBC. (n.d.). Afghanistan. BBC Persian. available at: <https://www.bbc.com/persian/afghanistan> (Accessed April 2023)

⁸⁶ Ishaqzai, A. H. (2022. P.118). *The Islamic Emirate and its system*: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia).

⁸⁷ Ishaqzai, A. H. (2022. P.87). *The Islamic Emirate and its system*: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia

number of drug addicts, preventing cronyism in public recruitment, mistreatment of the officials with visitors in governmental departments, indentifying people experiencing poverty and helping them. Decree No. 9 regarding the proper treatment of prisoners was issued in 2019 during the Taliban fight against the former government and foreign troops when the Taliban established the General Office of Prisoners Affairs in the form of a commission. They tried to show the world the good face of their movement with such decrees. Unfortunately, after recapturing power, the reports of International Human Rights Organizations show the torture and mistreatment of prisoners.

Regarding Women

The book "Islamic Emirate and its System" discusses the issue of women in three main topics: allegiance, appointing the Amir or caliph and the council,⁸⁸ and education. According to the ideas and historical narratives and based on Islamic Sharia, women do not have the right to be elected as Amir and do not have the right to participate in the oath of allegiance to the Amir. They are not allowed to be Ahl al-ḥall *wa-l-ʿaql* Council members. The book's author rejects the role of women in leadership by stating many reasons, the narratives of Islamic history, and the ideas of contemporary scholars. They also prohibit women's political participation, work, and co-education. Therefore, decree no 83 of the Taliban leader limited women's rights solely to the issue of marriage and heritage.

Many of the actions taken by the Taliban restricting the rights of women are not limited to the official decrees of their leader but have been done through the issuance of orders and practical actions. Since the Taliban recaptured Afghanistan, there have been more than 86 cases of practical actions to suppress and restrict women's rights. A part of "Islamic Emirate and its System" under the title of Women and Election states: "It shall be known that in the history of Islam, a woman has not had the right to choose an Imam."⁸⁹

An official representative of the Taliban said in Qatar on August 30, 2021: "There is no doubt that women will be actively involved in the government, but I cannot say whether they will take high positions or not." However, the BBC reports that, "with the announcement of the cabinet of Taliban and their subsequent actions, the living space for Afghan women has become more restricted day by day."⁹⁰

⁸⁸ Ishaqzai, A. H. (2022). P.148-152). *The Islamic Emirate and its system:* [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia

⁸⁹ United States Institute of Peace. (n.d.). *Tracking the Taliban's (Mis)Treatment of Women*. Available at: <https://www.usip.org/tracking-talibans-mistreatment-women>

⁹⁰ BBC Persian. (2023). 20 Taliban decrees that have systematically restricted women. BBC Persian. Available at: <https://www.bbc.com/persian/articles/cy0kld42xexo> (Accessed April 2023)

The Taliban's approach regarding the hijab is also derived from the discussion about the Imam's duties in preserving the chastity of the Islamic nation, which is stated in "Islamic Emirate and its System" under the topic of women's education.⁹¹

The study of the decrees and the Law for General Directorate for Monitoring and Follow-up of decrees and edicts of the Taliban Leader shows that the Taliban leader aims to issue these decrees not only to fill the legal gap created due to the revocation of the former government laws but also to execute the ideology of this group for consolidating that Islamic Emirate system which is explained in "Islamic Emirate and its System" .

The main objectives of the Taliban's decrees, edicts, and instructions can be summarized below:

- Institutionalizing the monopoly of power in the hands of the Amir (Taliban's leader);
- Strengthening the ranks, creating discipline and cohesion, screening the Taliban forces from the presence of other people as the only reliable force that protects the interests of the Emirate;
- Placing Sharia and the Hanafi School as the sole source for issuing decrees and taking actions in the Taliban government system;
- Disregarding the human rights obligations and other sources of legislation in Afghanistan;
- Negation of all political and civil freedoms and all civil and political movements for women under the title of customs imported by Westerners to Afghanistan;
- Ignorance of the rights of ethnic and religious minorities;
- Limiting the existence of institutions that protect public interests, such as the AGO, to a body monitoring the implementation of the Taliban's leader's decrees and confronting all cultural, legal, political, and social achievements that Afghans had made during the republic government under the guise of implementing Sharia.
- Attracting people's attention by symbolic acts such as a claim of ensuring justice, preventing the cultivation of narcotics, addressing the problems of the poor people, preventing corruption, and forbidding 'nepotism' in public recruitments, etc.

⁹¹ Ishaqzai, A. H. (2022. P.144). *The Islamic Emirate and its system*: [al-Imarat al-Islamiyat wa-Manzumatuha]. Darul Uloom al-Sharia (Accessed December 2023)

The Perspectives of Research Participants on the Decrees, Edicts, and Instructions of the Taliban's Leader

The overall review of the decrees, edicts, and instructions of the Taliban's Leader shows that their main objective is consolidating the absolute sovereignty of the Taliban's regime. Denying the rights of women, freedom of expression, and the rights of religious minorities, bringing order and discipline among the ranks of the Taliban, efforts to create a spirit of optimism among the people towards the Islamic Emirate, efforts to fill the gaps created from revocation of the former laws, absolute religious dominance, execution of the Islamic Sharia as the only source of issuing edicts, people's interactions, and radical comprehension of religion are the main objectives of the decrees, edicts, and instructions of the Taliban's Leader; the research participants have expressed their viewpoints in these regards.

Absolute Religious Dominance:

According to interviews with religious affairs experts, it can be asserted that all decrees and edicts from the Taliban's leader reflect their pursuit of absolute religious dominance. The Taliban are actively working towards establishing a government in Afghanistan that is fundamentally rooted in religious principles, and this is evident through the imposition of increasingly stringent restrictions on freedom of expression, women's education, and civil and political activities. Mr. Moheq, a renowned and forward-thinking scholar of Islamic Sharia, emphasizes, "The policy of the Taliban and radical groups is founded on religious tyranny, leading some experts to label their approach as Islamic fascism."⁹²

Revocation of Former Government Laws and Ambiguity Regarding Human Rights-Related Commitments

The issuance of decrees and edicts by the leader of the Taliban over the last two years has posed a significant challenge to Afghanistan's legislative process, which underwent extensive development and expansion in the last century. The revocation of all former laws and the disregard for other sources of legislation, including Afghanistan's human rights commitments, have resulted in a notable legal gap in the country. In this context, an Islamic scholar, who previously served as a preacher in one of Kabul's largest mosques before the government's fall

⁹² Moheq, research communication, May 2023

and currently resides in an Islamic country, states, "In fact, all laws are in suspension in Afghanistan, and there is no clear approach in this regard."⁹³

Radical Comprehension of Religion:

According to some experts interviewed, the Taliban's approach to issuing decrees and edicts stems from their radical interpretations of Islam. The experts argue that the Taliban's limited ability to interpret religious rulings is a consequence of their narrow perspective. Consequently, the Taliban often base their decrees on fatwas and rulings of *ijtihad* from several centuries ago, which are perceived as incompatible with contemporary conditions and advancements. This is evident in their stance on modern science education, women's education, the role of media in initiating reforms, civic activities, and compliance with international human rights laws, all of which are condemned and marked for elimination from the Taliban's standpoint.

Mrs. Najiba Ayoubi, a media and civil society leader currently in exile following the Taliban's recapture of Afghanistan, expressed her perspective: "The opposition of superficial scholars (Taliban), whose understanding of religion and jurisprudence is solely based on old fatwas, has narrowed the scope of Islam for the people. This has resulted in widespread public resentment. There is a crucial need to revisit jurisprudence, and it will undoubtedly lead to numerous changes."⁹⁴

Part Three

Civil Society and Civic Space in Afghanistan

The rights and freedoms essential for a robust civic space find expression within the framework of international human rights declarations, conventions, and mechanisms. Key documents in this realm include the Universal Declaration of Human Rights, 1948, the Conventions on Civil and Political Rights and Economic, Social, and Cultural Rights, 1966, and the Universal Declaration of Human Rights Defenders 53/144 of 1989 by the United Nations General Assembly.⁹⁵ In democratic societies, national laws align with international human rights commitments to fortify and safeguard civic space.

During their first period (1996-2001), the Taliban were unfamiliar with the concept and role of civil society organizations because, at that time, Afghanistan had just gone through five years

⁹³ Religious scholar, refugee in an Islamic country, interviewed for research, April, 2023

⁹⁴ Najiba Ayoubi, interviewed for research, London, April, 2023

⁹⁵ Office of the High Commissioner for Human Rights. (n.d.). The Declaration on Human Rights Defenders. United Nations. <https://www.ohchr.org/en/civic-space/declaration-human-rights-defenders> (Accessed December 2023)

of civil war. At that time, when the Mujahidin government was engaged in the civil war, the civic space and civil society organizations did not exist with the sense and scope that they exist today. The significant development of civil society is one of the most important achievements of the post-Taliban period from 2001 to 2021 in Afghanistan. Therefore, the Taliban may not have had the opportunity to properly understand the concept, position, and role of civil society. On the other hand, the Taliban look on all the social phenomena that were formed in the presence of the international community and American forces in Afghanistan in the last twenty years as imported phenomena and Western culture, as it is also stated in Haqqani's book. Therefore, the Taliban want to eradicate these phenomena.

The Taliban have not declared their commitment to adhere to any of the international human rights documents that Afghanistan has previously been affiliated with. Conversely, the issuance of decrees and actions aimed at restricting civic space and activities by the Taliban in the last two years highlights the pessimistic and disinterested stance of the Taliban's de facto government in this regard. Notably, last year, the Taliban dissolved the Afghanistan Independent Human Rights Commission, a key supporter of civic space in Afghanistan. However, the Department of Human Rights within the Ministry of Foreign Affairs, serving as the main department for Afghanistan's reporting to United Nations human rights mechanisms, and the Department of Human Rights within the Taliban Intelligence Directorate, which was responsible for monitoring the human rights situation of the national security-related detainees and prisoners, remain open.

Actors in Civic Space

Essentially, the foundation of civil activities is established by the people of society and members of civil society who engage voluntarily in these activities either individually or in collaboration with others within the framework of civil organizations and associations. Presently, a diverse array of civil society actors operate in all countries, with Afghanistan experiencing significant development in this field in recent years. Notable organizations active in Afghanistan include:

- Non-governmental organizations/associations and advocacy groups.
- Coalitions and networks focusing on women's and children's rights.
- Various associations.
- Unions and associations advocating for Persons with Disabilities rights.
- Community-based groups representing indigenous people, minorities, and rural communities.
- Faith-based groups, including religious groups, Ulema Councils, and Shia and Sunni brotherhood councils.
- Trade Unions.
- Journalists' unions and associations.
- Associations of judges and lawyers, as well as bar association.
- Student unions.
- Social movements, such as peace movements.

- Unions of doctors and medical workers.
- Transitional Justice Coordination Group.
- Advocacy groups for victims.
- Public institutions engaged in activities promoting human rights, including universities and research bodies.
- Unions/associations covering youth, sports, services, arts, etc.
- Tribal Jirgas (Councils).

Different Types of Civil Society Activities in Afghanistan:

Civil society organizations in Afghanistan engage in a range of activities similar to other countries around the world. These activities include:

1. Provision of Humanitarian Services:
 - o Addressing critical needs and assisting vulnerable populations.
2. Research and Advocacy:
 - o Conducting research to inform policy decisions and advocating for social change.
3. Public Awareness and Capacity Building:
 - o Enhancing public understanding of important issues and building community capacities.
4. Promotion of Arts and Culture:
 - o Fostering the development and appreciation of arts and culture within the society.

Over the past two decades, Afghanistan's civil society has played a significant role in various key areas, such as:

- Promotion and protection of human rights.
- Research and advocacy of human rights.
- Active participation in the fight against corruption.
- Advocacy for the rights of women, children, people with disabilities, and religious minorities.
- Promotion of freedom of expression, rule of law, social justice, and fair and transparent elections.
- Efforts to reduce civilian casualties.
- Promotion of unity and fraternity among ethnic groups.
- Engaging in peacebuilding initiatives and working towards national reconciliation.

Civil society organizations have contributed to the consolidation of the rule of law, raised public awareness regarding human rights law and related issues, conducted civil education programs, addressed economic concerns, and provided legal services and consultations.

Working through committees like the Civil Society Joint Working Group (SCJWG),⁹⁶ efforts were made to supervise the utilization of international aid. Furthermore, civil society has led impactful national discourses and campaigns, particularly in the areas of women's rights and peace. Active organizations have even presented peace plans at both national and international levels during the prolonged dialogue of the Afghan People's Dialogue (APD) spanning over three years.⁹⁷

The examination of civic space in Afghanistan necessitates an exploration of the historical evolution of civil society, revealing two distinct types: modern civil society and traditional civil society.

Modern Civil Society in Afghanistan:

The inception of modern civic activities in Afghanistan is often traced back to the era of Amir Shir Ali Khan (1862-1878), marked by the introduction of a stone printing press from India and the publication of the Shams al-Nahar newspaper. Notably, the first and second constitutional movements in the late 19th and early 20th centuries, which aimed to democratize society, stand out as crucial civil movements in Afghanistan's history. The formal legalization of activities and civil liberties was solidified during the reign of Mohammad Zahir Shah, notably based on the 1964 Constitution.⁹⁸

Key provisions in Articles 31 and 32 of this law outlined the right to freedom of expression and the right to establish associations and political parties.⁹⁹ The journey of civil society in Afghanistan has witnessed numerous ebbs and flows across different political periods in the country. The era of totalitarian regimes, particularly during the rule of parties affiliated with the former Soviet Union from 1978 to 1992, saw stringent government supervision and restrictions on civil liberties and activities.¹⁰⁰

Amid the Mujahidin regime (1992-1996), some non-governmental organizations commenced providing humanitarian services, drawing on experiences gained in neighboring countries. Additionally, certain dependent and semi-independent publications, such as Kabul Weekly, and cultural organizations linked with Jihadi organizations also initiated their operations. The initial period of Taliban rule in 1996 led to the suspension of activities for cultural organizations

⁹⁶ CSJWG the coalition of civil societies in Afghanistan through which they advocate for reforms in different sectors.

⁹⁷ United Nations Assistance Mission in Afghanistan. (2022). Afghan People's Dialogue: 34 Roadmaps on Peace. United Nations. Available at: https://unama.unmissions.org/sites/default/files/afghan_peoples_dialogue_34_roadmaps_on_peace_english.pdf (Accessed April 2023)

⁹⁸ Civil Society and its status in Afghanistan, publication of Herat experts council/
<https://www.heratps.org/analysewrite/%D8%AC%D8%A7%D9%85%D8%B9%D9%87-%D9%85%D8%AF%D9%86%DB%8C-%D9%88-%DA%86%DA%AF%D9%88%D9%86%DA%AF%DB%8C-%D8%A2%D9%86-%D8%AF%D8%B1-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86/>

⁹⁹ Wikipedia Contributors. (n.d.). 1964 Constitution of Afghanistan. *Wikipedia*. Available at https://en.wikipedia.org/wiki/1964_Constitution_of_Afghanistan. (Accessed April 2023)

¹⁰⁰ 1357 اوضاع اقتصادی و اجتماعی افغانستان پس از کودتای ثور (n.d.). *Khorasan Zameen*. Available at: <http://www.khorasanzameen.net/php/read.php?id=1044> (Accessed August 2023)

and semi-independent publications. However, some non-governmental organizations persevered in providing humanitarian services despite substantial restrictions.¹⁰¹

The 20 years of the republican government from 2001 to 2021 is recognized as a flourishing phase for civic space in Afghanistan.

Traditional Civil Society in Afghanistan

Traditional civil society in Afghanistan has a rich historical foundation, rooted in local social structures that have existed since ancient times. These organizations have played a vital role in addressing people's issues in the absence of formal laws and centralized governance. Symbols of people's participation in these local civil structures include local community councils, Jirga (tribal assemblies), elders' councils, and the organization of collective works in agriculture. Traditions such as selecting leaders for water regulation, community, village, foreman, herald, and community leaders further exemplify this active involvement.¹⁰²

Historically, certain traditional structures, such as the Jirga, have faced accusations of violating human rights, particularly women's rights. However, in recent years, increased awareness of human rights has prompted substantial changes in the functioning of the Jirga. Notably, with the development of modern civil society, some actors within the traditional civil society have transitioned to a legal presence in society. For instance, ethnic and religious scholars' councils have registered their associations and assemblies as civil organizations with the Ministry of Justice, enabling them to operate freely within the legal framework.¹⁰³

Civic Space Under the Islamic Republic of Afghanistan

The civic space under the Islamic Republic of Afghanistan can be categorized into two distinct periods.

Civic Space from 2001 to 2014

The commencement of active civil society participation can be traced back to the Bonn Conference in 2001, marking the establishment of the democratic system in Afghanistan. This period witnessed the formation of numerous civil society organizations (CSOs), with the

¹⁰¹ Ashraf, O. (2004, October 25). *The role of NGOs in Afghanistan's reconstruction*. BBC Persian. Available at: https://www.bbc.com/persian/afghanistan/story/2004/10/printable/041025_mj-qa-afghan-ngos

¹⁰² Orzala Ashraf Nemat & Karin Werner, *The Role of Civil Society in Promoting Good Governance in Afghanistan*, Afghanistan Research and Evaluation Unit (AREU), July 2016, available at: <https://www.refworld.org/reference/countryrep/areu/2016/en/112216> [accessed 10 March 2024]

¹⁰³ Global Informality Project. (n.d.). *Jirga / Shura (Afghanistan)*. Available at: [https://www.informality.com/wiki/index.php?title=Jirga / Shura \(Afghanistan\)](https://www.informality.com/wiki/index.php?title=Jirga / Shura (Afghanistan))

Ministry of Justice of the republic government recording a total of 4,476 CSOs. Additionally, hundreds of other civil society organizations were registered as NGOs with the Ministry of Economy.¹⁰⁴ These were diverse entities, including tribal assemblies, youth associations, trade unions, artisans, athletes, ethnic minority groups, tribal councils, vocational unions, cultural and art groups, as well as experts in various fields such as doctors, teachers, engineers, lawyers, established numerous CSOs to support and advance their respective areas of work.

During this phase, a mutual relationship based on understanding and cooperation was fostered between civil organizations, the public, and the government. Civil society members actively engaged in international and regional gatherings, exhibiting less dissatisfaction with the government. Considerable technical, financial, and political support from the international community played a pivotal role in the development of civil society. Moreover, this period witnessed significant advancements in the establishment and operation of print, audio, and video media outlets in Afghanistan.¹⁰⁵

Civic Space from 2014 to August 15, 2021

During this period, Afghan civil society activists note a less cooperative relationship between civil society organizations and the government. The government implemented measures to constrain the civic space and limit the activities of human rights defenders, particularly through legislation. Additionally, armed opposition groups, primarily the Taliban and ISIS, further undermined the civic space by threatening and targeting gatherings, as well as civil and media figures.¹⁰⁶

The government exhibited limited responsiveness to criticisms and recommendations from civil activists and media outlets, rendering these efforts largely ineffective. Despite the establishment of parallel structures aimed at restoring peace, such as the High Council of Peace, the Ministry of Peace, and the special envoy of the president for peace, civil and media activists were excluded from participating in peace talks with the Taliban in 2020. The government also marginalized civil society in significant processes. Moreover, in international conferences where civil society or human rights activists were expected to participate, the government often presented its own representatives as part of civil society, impeding the genuine voice of the people from reaching the international community.

Examples of civic space restrictions include the suppression of protests by the Tabassum Movement in November 2015,¹⁰⁷ the Roshnayee Movement in 2016, and the Rastakhiz Movement in 2017.¹⁰⁸ The government struggled to address these protests, primarily due to

¹⁰⁴ Ministry of Justice, available at: <https://moj.gov.af/sites/default/files/jamiats4476.pdf>

¹⁰⁵ Afghan Civil Society and Human Rights Network. (2021). *Restriction of Civic Space for HRDs in Afghanistan*.

¹⁰⁶ Afghan Civil Society and Human Rights Network. (04, 2021). *Restriction of Civic Space for HRDs in Afghanistan*.

¹⁰⁷ Wikipedia contributors. (2024, February 10). Tabassum movement. *Wikipedia, The Free Encyclopedia*. Available at https://en.wikipedia.org/w/index.php?title=Tabassum_movement&oldid=1205935372

¹⁰⁸ Afghan Civil Society and Human Rights Network. (04, 2021). *Restriction of Civic Space for HRDs in Afghanistan*.

inappropriate policies, corruption, and incompetence. Furthermore, the government failed to ensure the physical and mental security of media workers, civil rights activists, and human rights defenders. According to the UNAMA report, between January 1, 2018, and January 31, 2021, 33 journalists, including two women, and 32 human rights defenders and civil activists, including two women, were killed. The year 2018 marked a particularly perilous period, with 17 journalists and media workers and 13 human rights defenders losing their lives. In 2019, four human rights defenders were shot dead, and in another incident, the Taliban killed the head of the Independent Human Rights Commission of Afghanistan for Ghor province on the Ghazni-Kabul highway. Six media workers fell victim to targeted attacks. Additionally, Taliban members kidnapped and killed a journalist in Farah province, while the Khorasan branch of ISIS claimed the life of a journalist in Khost city. Four other journalists were killed in criminal events in Takhar, Kabul, and Kandahar for which no one claimed responsibility.¹⁰⁹

In 2020, there was a significant increase in the number of killings of human rights defenders in Afghanistan. Before the start of peace talks, ten human rights defenders were killed from January 1 to September 11, 2020, and no one claimed responsibility for these cases. Out of the ten human rights defenders killed, three, including Ms. Fatimah Khalil, an employee of the Independent Human Rights Commission, along with her driver, were killed in attacks using vehicle-borne improvised explosives. Gunmen killed five human rights defenders, and two were abducted, with their bodies later found. Three of them had been previously threatened by the Taliban. Four journalists and media workers were killed from January 1 to September 11, 2020, and the Khorasan branch of ISIS claimed responsibility for these attacks. After the commencement of the Doha peace talks on September 12, 2020, to January 31, 2021, five human rights defenders and six journalists were killed. ISIS claimed responsibility for only one case, and no other group took responsibility for the rest of the attacks.¹¹⁰

National and International Legal Framework of Civic Space

National Legislations

Several key laws were enacted to regulate civic space during the republic government in Afghanistan. These include:

- i. The Afghan Constitution (January 2004);
- ii. The Law on Associations (Afghan Official Gazette number 1114/2013);
- iii. The Law on Gatherings, Strikes, and Demonstrations (Official Gazette number 805/13.03.2003);
- iv. The Law on NGOs (adopted 25.03.1384 [2005]; Official Gazette number 857);

¹⁰⁹ United Nations Assistance Mission in Afghanistan. (n.d.). Human rights. Retrieved March 6, 2024, available at: <https://unama.unmissions.org/human-rights>

¹¹⁰ United Nations Assistance Mission in Afghanistan. (n.d.). Human rights. Retrieved [March 10, 2024], available at: <https://unama.unmissions.org/human-rights>

- v. The Law on Mass Media (2009) - Last amendment, Gazette 1167/2014 (amendment of Art 42-43 regarding the Mass Media Commission);
- vi. Access to Information Law (endorsed by President Ghani in December 2014).¹¹¹

International Human Rights Law

Afghanistan is a member of major International Human Rights Conventions, including:

- i. ICCPR – International Covenant on Civil and Political Rights (24 Jan 1983);
- ii. CEDAW – International Convention on the Elimination of All Forms of Discrimination against Women (05 Mar 2023);
- iii. CERD – International Convention on the Elimination of All Forms of Racial Discrimination (06 Jul 1983);
- iv. CESC – International Covenant on Economic, Social and Cultural Rights (24 Jan 1983);
- v. CRC – International Convention on the Rights of the Child (28 Mar 1994);
- vi. CRPD – International Convention on the Rights of Persons with Disabilities (18 Sep 2012);
- vii. CAT – Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (01 Apr 1987);
- viii. CESC – International Convention on Economic, Social and Cultural Rights (24 Jan 1983).¹¹²

The State of Civic Space in Afghanistan after 15 Aug 2021

The Taliban began restricting civic space after reclaiming power on August 15, 2021. In September, they suppressed the first women's protest by firing shots into the air and intimidating the participants. Subsequently, they intensified their suppression by arresting, torturing, and threatening women's rights activists. The bank accounts of all media outlets and civil society organizations (CSOs) were frozen, and reports surfaced of house and office searches, along with the insulting and mistreatment of civil activists. These actions prompted human rights defenders and civil activists to flee Afghanistan. Media outlets faced severe restrictions, and political parties were disbanded, while CSOs registered with the Ministry of Justice were instructed to curtail activities, with licenses left unrenewed.

¹¹¹ Ministry of Justice, Islamic Republic of Afghanistan. Afghanistan collection for national legislation. Retrieved [March 10, 2024], available at: <http://laws.moj.gov.af/>

¹¹² Office of the United Nations High Commissioner for Human Rights. (n.d.). Afghanistan. Retrieved March 11, 2024, available at: <https://www.ohchr.org/en/countries/afghanistan>

According to the International Organization of Reporters without Borders, over two-thirds of the 12,000 reporters active before the government's fall are now unemployed.¹¹³ Disturbingly, the Taliban arrested 151 reporters and physically assaulted 46 others in their first year of their rule.¹¹⁴ The recent report from the United Nations Special Rapporteur on Human Rights for Afghanistan underscores the highly fragile state of civic space in the country.¹¹⁵ Additionally, the international organization CIVICUS has evaluated and classified the civil space in Afghanistan as "closed" this year.¹¹⁶

The Taliban's Vision of Civic Activism

The Taliban's perspective on activities and civic space is rooted in their interpretation of Islam and their stance on manifestations that emerged during the former government, influenced by the international community's efforts and the participation of the Afghan people in enhancing Afghanistan's social, political, economic, and cultural affairs. This Taliban approach is grounded in its ideological doctrine, encompassing the "Islamic Emirate and its System", and has been implemented through various means, including decrees, edicts, verbal instructions, and violence.

During the previous government, specific members of Afghan civil society organizations and politicians engaged in informal dialogues with the Taliban outside Afghanistan. Notably, they participated in the meetings of the Pugwash¹¹⁷ Conferences Organization in Doha in 2013 and 2015, as well as subsequent sessions in 2019, with the Taliban approving their presence during those times.¹¹⁸

Civil society organizations, media outlets, and human rights activists consistently played an active role in denouncing, informing about, and reporting cases of human rights violations, including civilian casualties attributed to the then government or US forces. The Civil Society Advocacy Committee, involving several CSOs and UNAMA, had been operating in Kabul to prevent civilian casualties.¹¹⁹

¹¹³ Reporters Without Borders. (2023, August 10). *Afghan journalism still resisting after two years of Taliban persecution*. Available at: <https://rsf.org/en/afghan-journalism-still-resisting-after-two-years-taliban-persecution>

¹¹⁴ Rawadari. (Accessed, 2022, December 10) [Setback and suppression - Human rights situation in Afghanistan 24 Asad 1400 - 24 Asad 1401]. Available at <https://rawadari.org/10122022251.htm/> (Accessed April 2023)

¹¹⁵ United Nations Human Rights Council. (2023). *A/HRC/53/21: Situation of women and girls in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls*. Office of the High Commissioner for Human Rights. Available at <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>

¹¹⁶ CIVICUS. (2024). Afghanistan. *Civicus Monitor*. Available at: <https://monitor.civicus.org/country/afghanistan/> (Accessed April 2023)

¹¹⁷ Pugwash Conferences on Science and World Affairs. (2015, May 4). *First Doha Meeting on Security in Afghanistan*. Available at <https://pugwash.org/2015/05/04/doha-meeting-on-security-in-afghanistan/> (Accessed April 2023)

¹¹⁹ Civilians in Conflict. (2017, December). *Afghanistan Practice Note*. Available at <https://civiliansinconflict.org/wp-content/uploads/2017/12/Afghanistan-Practice-Note-.pdf>

Similarly, another committee comprised of civil society organizations, including the Afghan Independent Bar Association (AIBA),¹²⁰ worked diligently to defend and litigate for the rights of prisoners, striving to hold all parties involved in the war accountable for human rights violations. These CSOs collaborated with international organizations to compile periodic human rights reports and assisted them through various mechanisms. During this period, the Taliban welcomed civil society protests and media reports criticizing the shortcomings of the republican government as long as it aligned with their interests, showing no opposition in this regard. However, civil activists were not entirely safe and faced threats from the Taliban. Nevertheless, after the Taliban regained power in Afghanistan, their stance towards civil society turned hostile.

According to the Taliban, CSOs and political parties are Western phenomena that must be removed from the society of Afghanistan. Although the Taliban have publicly expressed their opposition to the activities of political parties, they have not officially declared anything about the removal of CSOs. Consequently, some CSOs, even with their leaders leaving Afghanistan, continued to operate by adjusting the scope of their work under strict Taliban supervision. One reason for the continuation of these organizations is related to economic issues, as they contribute to Afghanistan's weak economic cycle using funds from foreign donors. Some national organizations have also shifted towards surveying and distributing humanitarian aid, possibly explaining why the Taliban's de facto government is not immediately interested in their removal. The Taliban hold specific views on the content and scope of CSO activities: considering that peace has been established, the democratic system based on elections no longer exists, the human rights commission has been dissolved, and people's rights have been ensured, according to the Taliban, there is no need for CSOs. From their perspective, women should remain at home as their presence in society leads to immorality, freedom of expression is limited to promoting virtue and preventing vice, and people do not have the right to criticize or protest against the Islamic Emirate. Therefore, the working scope is greatly restricted and limited for most CSOs, and the Taliban see no need for their existence. According to the Taliban, the presence of political parties is contrary to the Qur'an, as these entities divide and disunite Muslim societies.

The Taliban's Approach to Restricting Civic Space

Reports from media and international organizations indicate that the Taliban employ three primary methods to suppress and restrict civic space. The first involves decrees, edicts, and verbal instructions issued by the Taliban's leader and officials. The second encompasses actions carried out by their security and intelligence organs. Historical evidence demonstrates that authoritarian governments use diverse means to quash, exert pressure on, and manipulate civil activities. Their initial step typically involves prohibiting the operations of unlicensed organizations. Not only do the Taliban prevent unlicensed organizations from functioning, but they also refrain from renewing licenses for previously established organizations. In rare instances, these licenses are exclusively granted to insiders rather than external entities. The

¹²⁰ Afghanistan Independent Bar Association in Exile. (2023). *Home*. Available at <https://www.aibaic.org> (Accessed April 2023)

second method involves threats, intimidation of active members, monitoring, and abrupt inspections of organizations, actions consistently taken by the Taliban against Afghan CSOs over the past two years.

The third tactic centers on establishing organizations that endorse and align with the de facto government's policies. Certain individuals and entities support the existing de facto government, and their active presence on social media is becoming more prominent. The Taliban closely monitor the posts of social media users, with civil activists often facing threats, intimidation, arrest, and even imprisonment for sharing human rights issues, engaging in litigation, or criticizing government officials. The General Directorate of Intelligence, Taliban police, and local officials are actively involved in these activities.

Civic Space, Islam, Tradition, and International Human Rights Law

While the modern concept of civic space did not exist when Islam originated in 610 AD, and contemporary civil society is associated with Western liberal democracy, early instances and manifestations of civil society can be discerned in the discourses, history, and religious narrations of Islam and the culture of Islamic societies.

In the history of Islam, it is documented that before being chosen as a prophet, Prophet Muhammad, in his youth, participated in a meeting to establish an alliance called Half-al-Fazul.¹²¹ Their goal was to assist people experiencing poverty and combat oppressors. When later chosen as a prophet, he expressed his willingness to participate in such a group if invited again. This narrative highlights the Prophet's support for initiatives aimed at helping the poor and advocating for their rights, resembling the associations and voluntary activities of contemporary Civil Society Organizations (CSOs). In the simplest definition, "civil society is a collection of organizations, associations, and social entities independent of the government and political power." The following are some instances of civil organizations in Islam:

Endowment (Waqf)

A notable instance of civil organizations in the history of Islam is the endowment (Waqf) in Islamic societies. According to Islamic jurisprudence, endowment involves dedicating property or its profits for the benefit of the public without expecting anything in return.¹²² The endowment agreement stipulates that the property or its profits are allocated for the well-being

¹²¹ Mojaddadi, A. A. (2019). Half al-Fazool first prophetic effort for Islamic welfare state. *Islamic Studies Research Journal Abhāth*, 4(16). Available at <https://ojs.lgu.edu.pk/index.php/abhath/article/view/180> (Accessed April 2023)

¹²² *The Book of Guidance*. Shamela. Available at <https://shamela.ws/book/11820/571> (Accessed April 2023)

of the people, illustrating one of the manifestations of benevolence and goodness in Islam.¹²³ An endowment supervisor oversees the management of endowment-related assets, and it is strictly prohibited for anyone to personally take possession of them. Utilizing the income generated from an endowment property for caring for orphans, constructing schools, or covering the educational expenses of certain students exemplifies the noble purposes of endowments.

For centuries in Islamic countries, the administration of endowment affairs has been entrusted to reliable individuals known as endowment supervisors. In recent years, some Islamic countries have established official administrations to oversee endowments. However, these administrations do not possess the authority to interfere with or alter the legal status of an endowment. Their sole responsibility is supervision.¹²⁴

Sufism (Tasawwuf)

The monasteries of Sufis that are known as KHANUQAH and Tariqa elders also serve as examples of traditional civil gatherings in Islamic societies. These organizations have been instrumental in maintaining peace of mind and fostering the spirit of peace and mutual understanding for centuries. Studies reveal that Sufi monasteries introduced innovative spaces for teaching religious concepts, with the incorporation of art, music, and oral traditions being significant contributions. These monasteries played a crucial role in accommodating diverse perspectives.¹²⁵

Sufi monasteries and the practice of Sufism can be recognized as influential contributors to the religious landscape of classical civil society. Scholars researching Eastern societies argue that internal and external conflicts, social unrest, and the deprivation of civil liberties in Islamic societies have prompted a turning to Sufism. Carl W. Ernst, an American scholar specializing in Islamology, noted, "The Mongol attack destroyed aid networks and religious support but did not prevent the spread of Sufism. In response to the spiritual gap created before the caliphate's fall, Sufi Tariqats expedited their penetration into society."¹²⁶

Trade Unions

Islamic history highlights the active participation of trade unions in Islamic societies, playing a crucial role in establishing order in the market, overseeing trade activities, and upholding trade customs. The involvement of the people themselves in selecting and establishing

¹²³ Koehler, B. (2010). Early Islamic Charities As Catalysts Of Institutional Innovation. *Economic Affairs*, 30(3), 6-8. <https://doi.org/10.1111/j.1468-0270.2010.02014.x>

¹²⁴ Institute of Economic Affairs. (2023). *Faith in Markets*. Available at <https://iea.org.uk/wp-content/uploads/2023/06/Faith-in-Markets-Interactive.pdf> (Accessed December 2023)

¹²⁵ Ernst, C. (1996). *Ruzbihan Baqli: Mysticism and the rhetoric of sainthood in Persian Sufism*. Routledge. (Accessed December 2023)

¹²⁶ Ernst, C. (1996). *Ruzbihan Baqli: Mysticism and the rhetoric of sainthood in Persian Sufism*. Routledge. (Accessed December 2023)

principles for these unions has been a consistent practice, often without government interference. In jurisprudence books and texts, Islamic jurists have not expressed opposition to the presence of these unions and institutions. In certain situations, when expertise is required, the cooperation of these unions has been specifically sought.¹²⁷

On the other hand, one of the principles of Islamic jurisprudence concerning the legitimacy or illegitimacy of acts is that when there is no explicit text in Sharia about the permissibility of any act, it is considered permissible to engage in that act.¹²⁸ Therefore, if Sharia does not explicitly prohibit an act and it aligns with the interests and goals of Sharia, there is no issue with its acceptance in Islamic society. Thus, concerning organizations and associations not integrated into the government structure, if they do not conflict with religious goals, there is no prohibition for them in Sharia, making the existence of civil organizations in society acceptable.

An examination of political events in the contemporary Islamic world reveals the influence of Islam in the emergence and development of civil organizations. While radical Islamic groups in some Islamic countries have sought to overthrow previous regimes and establish radical governments, in many Islamic nations such as Egypt, Algeria, Lebanon, Jordan, Palestine, Turkey, Pakistan, India, Bangladesh, Malaysia, and Indonesia, civil organizations or Islamic political groups, including charities and non-governmental organizations, have managed to play a significant and constructive role.

Civic Space in Islamic Countries

The Organization of the Islamic Cooperation, established in 1969 with 57 Islamic member states covering nearly two billion people, emphasizes the strengthening of good governance, democracy, human rights, and fundamental freedoms in its charter. The Dakar meeting in 2008 approved the new charter, highlighting the importance of cooperation and working partnerships between Islamic countries and civil societies, including academic institutions, to facilitate and launch religious discourses specific to each country.¹²⁹

Reports from international organizations monitoring the state of civic space worldwide reveal heterogeneity and numerous challenges in the civic space of Islamic countries. The civic space in many of these nations, including Afghanistan, is considered critical. For example, based on the classification by the CIVICUS Monitor, Pakistan and Turkey are categorized as having a Repressed state, while Iran, the United Arab Emirates, Saudi Arabia, Egypt, Uzbekistan, Tajikistan, Turkmenistan, and China are classified as having a Closed state.¹³⁰

¹²⁷ Esposito, J. L. (2000). *Islam and Civil Society*. Georgetown University. Available at https://www.academia.edu/86855263/Islam_and_Civil_Society

¹²⁸ Mubāḥ (Arabic: مباح) is an Arabic word roughly meaning "permitted."

¹²⁹ International Center for Not-for-Profit Law. (2023, December 7). Organization of Islamic Cooperation. Available at <https://www.icnl.org/resources/civic-freedom-monitor/oic>

¹³⁰ CIVICUS. (n.d.). *Home - Civicus Monitor*. Available at <https://monitor.civicus.org/> (Accessed December 2023)

Although many of these countries have several laws allowing civic activities, practical problems persist for civic organizations. In Pakistan, despite having 21 laws, two national policies, and an action plan regulating 45,000 civil organizations with a workforce of three hundred thousand employees, government interference and security threats continue to impose limitations on the civic space daily.¹³¹

In the Islamic Republic of Iran, the Law on People's Associations, among other regulations, oversees the operations of over 22,000 civil organizations active in cultural, social, and charitable fields.¹³²

Tajikistan hosts approximately 3,000 non-governmental organizations engaged in various fields with support from foreign donors. Laws such as the Law on Non-Governmental Organizations, the Law on Assemblies, Protests, and Demonstrations (ratified in 2014), the Law on People's Associations, and the Law on Prohibition of Discrimination (ratified in 2022) govern the activities of civil organizations, primarily involved in charity, humanitarian aid, peace and stability, and democratic processes.¹³³

Uzbekistan, allowing civil organizations' activities under government supervision since its independence in 1991, still sees the need for more tangible activity within its civil society. As of 2022, around 320 non-governmental organizations are registered in the country, with ongoing amendments to civil organization laws. The New National Development Strategy of Uzbekistan for 2022-2026 acknowledges an active role for civil society.¹³⁴

In Turkmenistan, the first law on People's Associations, ratified in 1991, paved the way for civic activities. Subsequent laws, such as the Voluntary Law, Counter Human Trafficking Law, and the Law on Ombudsman, have facilitated civic activities, yet challenges persist. Though specific statistics on the number of civil or non-governmental organizations are elusive, it is known that around 150 civil groups operate under government supervision.¹³⁵

Turkey has 101,458 registered associations and 6,074 active foundations. The Law on Organizations, Foundations, and Associations governs the operations of civil organizations in the country, which have encountered numerous challenges in recent years.¹³⁶

¹³¹ International Centre for Not-for-Profit Law. Organization of Islamic Cooperation. Available at <https://www.icnl.org/resources/civic-freedom-monitor/oic> (2023, December 7)

¹³² Iran Think Tanks. (n.d.). Pathology of Non-Governmental Organizations (NGOs). Available at <https://iranthinktanks.com/pathology-of-non-governmental-organizations-ngos/> (Accessed December 2023)

¹³³ International Center for Not-for-Profit Law. (n.d.). Tajikistan - Civic Freedom Monitor. Available at <https://www.icnl.org/resources/civic-freedom-monitor/tajikistan> (Accessed December 2023)

¹³⁴ International Center for Not-for-Profit Law. (n.d.). Uzbekistan - Civic Freedom Monitor. Available at <https://www.icnl.org/resources/civic-freedom-monitor/uzbekistan> (Accessed December 2023)

¹³⁵ The New Humanitarian. (2003, July 22). Building the Non-Governmental Sector. Available at <https://www.thenewhumanitarian.org/news/2003/07/22/building-non-governmental-sector> (Accessed December 2023)

¹³⁶ International Center for Not-for-Profit Law. (n.d.). Türkiye - Civic Freedom Monitor. Available at <https://www.icnl.org/resources/civic-freedom-monitor/turkiye> (Accessed December 2023)

Civic Space in Afghan Culture

As previously mentioned regarding traditional civil organizations in Afghanistan, voluntary activities, advocacy, consultations to resolve disputes among people and tribes, and the observance of cultural, religious, and national occasions hold historical significance and deep roots in Afghan traditions and customs. However, the political landscape and the type of government have influenced civic activities and civic space throughout different periods of history. Here are some examples:

Mushaira Gatherings

One notable example of civic activities and civic space in Afghanistan, regarding freedom of expression, is Mushaira (poetry) events. Popular among cultural associations across Afghanistan, these gatherings bring together poets and writers who read their poems and writings, sometimes offering criticism of the current situation, and suggesting improvements. Even under the rule of the Taliban, Mushaira gatherings persisted, albeit without the participation of female poets. Despite concerns from the ruling government, some poets courageously presented critical poems even under the current Taliban regime. The well-known Nargis and Orange flower Mushaira in eastern Afghanistan is a prominent example. While the Taliban have banned music, they have not opposed poetry or Mushaira gatherings, recognizing their motivational impact on the morale of fighters. However, a recent directive from the Ministry of Propagation of Virtue and the Prevention of Vice prohibits the writing of poems that can be performed with music.

Hashar or Collective Work of People

The organization and execution of collective works in villages and remote areas, such as digging and cleaning irrigation canals, constructing mosques, and building public roads.

Selection of Head of Water Regulation (Merab)

This involves choosing a leader to regulate water supply for agriculture and horticulture, as well as selecting heads for trade unions and community leaders.

Conducting Tribal Jirgas to Resolve Legal and Criminal Disputes

Tribal Jirgas play a pivotal role in Afghan people's civic and cultural activities. These voluntary civil activities have been crucial in regulating people's lives, particularly during times when central governments have been unstable or shaken in the country.

Restrictions of Civic Space in Afghanistan

Restriction of the Right to Peaceful Assembly

Every individual possesses the right to peaceful assembly. The right to freedom of peaceful assembly encompasses the ability to engage in assemblies, sit-ins, strikes, demonstrations, and protests, whether online or offline.¹³⁷ Furthermore, this right involves "the voluntary and temporary presence of people in a public place for a specific and common purpose."¹³⁸ Peaceful assembly includes activities such as demonstrations, internal gatherings, launching strikes, or sit-ins. The fundamental objective of this right is to enable individuals, either alone or collectively, to congregate in a specific location, asserting their rights and raising their voices.

The right to freedom of peaceful assembly serves as the foundation for other rights, including freedom of expression and the right to participate in the governance of people's affairs. Governments are obligated to facilitate the peaceful engagement of individuals in civil and political gatherings. The use of force to suppress and disperse peaceful assemblies is strictly prohibited under International Human Rights Laws. Prohibiting this right results in stifling the voices of the people, allowing autocratic regimes to persist in tyranny and self-aggression, hindering the implementation of reforms. Unfortunately, the restriction of peaceful gatherings has become a prevailing practice in many countries worldwide, particularly in Islamic societies.

Peaceful Assembly under the Taliban

The Taliban have shown severe opposition to assemblies since they recaptured power. They suppressed the gatherings that were mainly women-led. The first protest by women against the violation of their rights under Taliban rule was held by a group of women in Kabul city on August 19, 2021, just four days after the Taliban recaptured power. The second protest by women was launched in Herat on September 2, 2021, and women in Balkh Province – Mazar-e-Sharif City launched a protest against the Taliban five days later on September 7. The Taliban realized the sensitivity of the issue and that the continuation of these protests would be an obstacle to recognition of their regime, so they brutally suppressed such demonstrations. To prove that they have supporters among women, the Taliban organized a group of women supporters in the city of Kunduz. They took them on the road wearing black dresses, scarves, and gloves on September 8 to show the people and the world that Afghan women support them.

¹³⁷ United Nations High Commissioner for Human Rights. (n.d.). Freedom of Assembly and Association. Available at <https://www.ohchr.org/en/topic/freedom-assembly-and-association> (Accessed December 2023)

¹³⁸ United Nations High Commissioner for Human Rights. (2012). Guidelines on Freedom of Assembly (Publication No. HR/PUB/12/4, pp. 15). Available at <https://www.osce.org/files/f/documents/4/0/73405.pdf> (Accessed December 2023)

Similarly, a group of pro-Taliban women were brought to a demonstration in Kabul city on January 20, 2022, to show their support of the Taliban government. The Taliban beat, insulted, tortured, and detained the women protesters in the capital and provinces. It was the first time in the contemporary history of Afghanistan that women were imprisoned due to their opposition to the ruling government. The women's slogan in this demonstration was "food, work, and freedom." This slogan was not only the want of women, but all the people of Afghanistan agreed with them for raising their because, with the return of the Taliban to power, the miserable economic situation, unemployment, and deprivation of civil liberties and human rights have dominated the society. On August 25, 2021, the Taliban ordered women to stay at home because their fighters were not trained on how to treat women. On September 8, 2021, the Taliban announced the ban on holding demonstrations and gatherings without prior permission, and therefore, any gatherings and assemblies of women were strictly prevented. Although after the arrests and detention of protesting women in recent months, women have continued to oppose and litigate by holding meetings in hidden places and publishing their protests on social networks, the Taliban are still monitoring such movements of women, and they do not allow women to do so. On the evening of Sunday, August 20, 2023, the Taliban attacked a residential house in the Khair Khana area of Kabul, where a group of girls were supposed to launch a protest; the Taliban put them under search and detention for several hours. Eventually, they were released with a guarantee and commitment after the elders and their families mediated for them.¹³⁹

The Taliban argue for the prohibition of gatherings for protest purposes based on Islamic Sharia, and they believe that any verbal, ideological, and practical opposition to the regime called the Islamic Emirate is considered rebellion (rebellion against a just Imam and disobeying him) and the rebels should be punished according to Sharia. From the Taliban's point of view, those who engage in civil protests and such assemblies must be killed, which is severe compared to torturing and imprisoning them. As Mullah Neda Mohammad Nadim, the Minister of Higher Education of the Taliban in one of his speeches on February 10, 2022, on the occasion of the graduation ceremony of a Madrassa in Kandahar, said: "The people who work for the overthrow of the regime whether it is verbal, written or practical, these people are considered rebels and must be killed."¹⁴⁰ This is why the men's assemblies for protest were suppressed with severe military reaction and resulted in casualties during the first days after the Taliban recaptured power. On September 11, 2021, when a group of influential locals and elders held a gathering in Parwan province, the Taliban attacked and suppressed it with military forces. The Taliban repressed 13 cases of civil protests and peaceful assemblies during the first month of their rule after recapturing power. They also arrested and tortured the participants and

¹³⁹ Darivova. (2024, March 10). The Taliban released eight members of a women's protest movement a few hours after they were arrested. Available at <https://www.darivova.com/a/the-taliban-released-eight-members-of-a-women-s-protest-movement-a-few-hours-after-they-were-arrested/7233473.html> (Accessed December 2023)

¹⁴⁰ 8am.media. (2024, March 10). Minister of Higher Education of the Taliban: Those Responsible for the Destruction of the System are Liable to Death. Available at <https://8am.media/minister-of-higher-education-of-the-taliban-those-responsible-for-the-destruction-of-the-system-are-liable-to-death/> (Accessed December 2023)

journalists who were in the assembly to make reports. Based on the reports, two participants were killed, and 6 of them were injured.¹⁴¹

The Taliban's approach to suppressing demonstrations and assemblies lacks professionalism, as they do not possess the necessary professional training. Instead of employing established policing methods, the Taliban resort to disrespectful actions, verbal abuse, physical assault, firing shots into the air, damaging cameras and phones owned by demonstrators, tearing and discarding slogans and placards, and subjecting individuals to detention and torture during protests. This behavior not only contradicts widely accepted international human rights standards but also goes against Afghan customs and traditions. Afghan societal norms traditionally hold a high regard for the position of women, making the Taliban's actions further at odds with the cultural values of Afghanistan.

Peaceful Assembly in Islamic Sharia

Peaceful assembly in Islamic Sharia is acknowledged by Paragraph 3 of Article 23 in The Cairo Declaration of Human Rights. This article stipulates, "Everyone has the right to freedom of peaceful assembly and association in accordance with national legislation." Within Islamic Sharia, Hajj stands out as one of the most significant peaceful gatherings across all Islamic communities. Beyond being one of the five pillars of Islam, Hajj serves as a large assembly where Muslims come together to foster better understanding, discuss societal relations and problems, and seek collective solutions.¹⁴²

A notable instance of peaceful assembly in early Islamic history occurred in the Saqifah Bani Sa'idah after the death of the Prophet of Islam. In this gathering, the people of Madinah, the Ansar, and the emigrants of Makkah reached a consensus on selecting the successor of the Prophet through discussion.

The Holy Qur'an promotes consultation as a desirable quality among Muslims: 'وَأْمُرْهُمْ شُورَىٰ' (Translation: 'And their affairs are conducted by mutual consultation among themselves').¹⁴³ Hence, council and consultation form integral components of the Islamic governance system. Typically, those participating in the council are permitted to hold peaceful assemblies collectively or by appointing authorized representatives to advocate for them and express their opinions.

Peaceful Assembly in Afghan Culture

Historically, the culture of consultation and peaceful assemblies has been a part of Afghan culture. These assemblies have been left as a legacy based on historical traditions from the

¹⁴¹ "Rawadari." (n.d.). Available at <https://rawadari.org/101220231730.htm/> (Accessed December 2023)

¹⁴² Organisation of Islamic Cooperation. (2021). The Cairo Declaration on Human Rights in Islam. Available at https://www.oic-oci.org/upload/pages/conventions/en/CDHRI_2021_ENG.pdf (Accessed December 2023)

¹⁴³ Qur'an. Surah Al-Shura, verse 38. Available at: <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

Aryan tribes who laid the foundation of governance in this land. Researchers relate the history of Jirga and consultative assemblies with the holding of assemblies such as “Sebha” and “Senti” and believe that the Aryan tribes were familiar with the two assemblies mentioned above from the earliest days and used them to elect rulers and resolve legal issues. Nevertheless, in the last three centuries, Jirgas have played a significant role in Afghanistan’s political and social life. The election of Ahmad Shah Abdali as the Shah of Afghanistan in 1747 in the Shah Mazar Jirga of Kandahar and, later, other Jirgas from the Amani period until today have determined the political and legal fate of Afghanistan. Similarly, the Loya Jirgas to ratify the constitution are part of the formalities of ratifying the constitution of Afghanistan.¹⁴⁴

The people of Afghanistan are familiar with peaceful assemblies in the form of conferences, symposiums, seminars, marches, demonstrations, and sit-ins, from after 1964 when the constitution opened a relatively free space for political movement. The right to peaceful assemblies in different governments has been influenced by the thoughts and policies of the regimes of the time: for example, in the governments of former pro-Soviet parties, that is, Khalq and Parcham (People’s Democratic Parties), assemblies against the regime were illegal and punishable. On the other hand, during the rule of the Islamic Republic of Afghanistan, people had the right to organize peaceful assemblies throughout Afghanistan; however, in recent years, these assemblies were faced with many security threats and attacks. Hence, the continuation of security threats to people’s assemblies and the government’s displeasure with citizens’ increasing criticism of the government’s failures resulted in the amendment of the law on demonstrations and protests. Still, despite that, people enjoyed this right until the last day of the fall of the republic government. Of course, this right has been taken away from people in the government under the Taliban administration. Any peaceful assembly against the Taliban government is considered rebellion against it, and participants are arrested and punished. This is while the Taliban allows peaceful assemblies of their followers.

Peaceful Assembly in the International Human Rights Law

Article 20 of the Universal Declaration of Human Rights mentions the right to peaceful assembly, along with the right to establish associations: “Everyone has the right to freedom of peaceful assembly and association.”¹⁴⁵ Article 21 of the International Covenant on Civil and Political Rights and Conventions 87 and 98 of the International Labor Organization (ILO) also recognize this right. Peaceful assemblies and the right to protest are signs of a society based on civil and political freedoms and respect for human rights. It is an essential characteristic of a dynamic civil society. Furthermore, this right enables citizens to express their demands freely

¹⁴⁴ “Ariaye.” (n.d.). Available at <http://www.ariaye.com/dari/qanoonasasi/rahin.html>, (Accessed December 2023)

¹⁴⁵ United Nations. (n.d.). Universal Declaration of Human Rights. Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Accessed December 2023)

and without fear, and form peaceful assemblies. In addition to that, this right shows the social participation of people in the society.¹⁴⁶

Restrictions on the Right to Freedom of Association

Rights to freedom of association under the Taliban

In the last two years, the treatment of the Taliban regarding the right to establish associations and civil organizations has been different compared to the era of the republic government, which is discussed below:

Laws and Procedures

Although the Taliban have announced the revocation of all previous laws, in addition to their newly introduced procedures, they still follow the previous Non-Governmental Organizations (NGO) Law in their operations. Therefore, registration of non-governmental organizations, preparation of by-laws of association, acquisition of activity licenses, tax reporting, and scope of activities and goals of NGOs must be by the new policy. Now, the NGOs' field of activity is limited to only four areas: social services, education, health, and agriculture. Furthermore, there should be no mention of issues such as capacity building, planning, peace, research, human rights, raising awareness, counseling, and other such words in the by-laws of associations.

According to the instructions of the Ministry of Economy, no foreigner should be an honorary and advisory member of the boards of civil institutions (non-governmental organizations). The names and personal information of board members and all non-governmental organization officials are examined. Moreover, women cannot be appointed to the leadership or membership of civil society organizations, nor can civil society organizations publish their desired books and publications without submission to and approval of the Ministry of Information and Culture Commission.

On August 12 of this year, the Ministry of Economy of the de facto government of the Taliban issued a Letter of Guidance in 22 articles signed by the acting minister of Economy and shared it with all the provincial directorates of that ministry, which imposed restrictions; compliance is mandatory for all NGOs. According to these guidelines, all NGOs should implement their

¹⁴⁶ International Labour Organization. (n.d.). Introduction to International Labour Standards. Available at: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (Accessed December 2023)

projects with the coordination of this ministry, and in these guidelines, all organizations have been informed to avoid political, ethnic, or racial activities.¹⁴⁷

Business Licenses

Before the collapse of the republic, 4476 CSOs were registered at the Ministry of Justice. In the last two years, the ministry has not renewed the work licenses of these associations, without providing any justification. Interestingly, the list of these associations still exists on the Justice Ministry's website, indicating them as active CSOs. However, when these organizations seek to renew their business licenses, they are informed that they cannot do so based on the instructions of higher authorities.

In the last two years, 149 charitable organizations and 99 trade unions have managed to obtain working licenses from the Ministry of Justice of the de facto government. Nevertheless, registering a new civil institution in the Ministry of Justice has become an impossible task, particularly for human rights-related activities.¹⁴⁸

Many civil institutions, such as associations and assemblies that could not get registration in the Ministry of Justice, have tried to register their organizations as non-governmental organizations in the Ministry of Economy by revising their work plans and objectives. Of course, the de facto government of the Taliban completely opposes those institutions whose organizational objective is to promote democratic values such as democracy, elections, human rights, victims' rights, women's rights, good governance, cultural and artistic activities, and alike, so they are not permitted to operate. Recently, the Ministry of Justice has declared more than 400 civil society associations, which were operational in several provinces, as illegal CSOs. Additionally, 1600 associations have been announced as abolished.¹⁴⁹

Obtaining a business license from the Ministry of Economy does not mean the end of work. Recently, organizations and institutions have been required to obtain an official permit from the Ministry of Economy for the implementation of their initiatives, such as conferences, seminars, workshops, and any educational and capacity-building programs. They can only implement it after obtaining an official permit and agreement from the provincial directorates of the Ministry of Economy and by informing the intelligence department. However, a member of a civil society who leads a research institution in Afghanistan said: "My colleagues organized programs for university students in one of the northeastern and eastern provinces of Afghanistan last year, as well as in the recent past. Although we also had an official letter from the central de facto government, the provincial intelligence officials summoned our colleagues during the program. After two hours of discussion, they were rereleased on the condition that

¹⁴⁷ Letter No. 208 dated 12/03/1445 - 12 August 2023, Ministry of Economy of the de facto government, to provincial Directorates of Economy

¹⁴⁸ Ministry of Economy. (2023, August 12). List of civil society organizations cancelled (Letter No. 208 dated 12/03/1445 - 12 August 2023)

¹⁴⁹ Ministry of Justice of Afghanistan. (2021, May 30). List of Illegal Social Organizations. Available at <https://moj.gov.af/sites/default/files/provincesillegal-social-orgs5302021.pdf> (Accessed December 2023)

they would obtain permission from the provincial intelligence department next time. In addition, they took their promise not to make the issue public.”¹⁵⁰ Furthermore, the price of issuing a license for institutions, which used to be 10,000 Afghani, has now increased to 50,000 Afghani.

The officials of the Ministry of Economy of the de facto government disagree with the word and name of research whenever it is attached to the name of a civil institution. A civil society activist who recently visited the Ministry of Justice and Economy to re-register his civil society organization and who was interviewed with respect to this research told his story as follows: “I went to the Ministry of Justice to register my civil institution, which was previously registered in the Ministry of Justice; however, they refused to register it again and did not give any reason. Therefore, I had to change the name of the institution and went to the Ministry of Economy to register it as a research institution; the person in charge of the relevant department, after considering the name of the institution, refrained from going through the process and said that research is our work (that is, the work of the government) and you cannot do research. However, I tried to make him understand that the purpose of this research is not criminal research but rather a field or academic research that civil institutions worldwide undertake. Still, he did not listen to my words and seriously warned me that I should look for another name if I wanted to register my institution. Hence, I have removed the research prefix from my institution’s name, but I am still unsure what problem I will face.”¹⁵¹

The recent report on September 1, 2023 of the United Nations Special Rapporteur on the situation of Human Rights in Afghanistan, Mr. Richard Bennett, has also explained the numerous problems of civil organizations under the rule of the Taliban de facto administration. In section 31 of his report, he also mentions the forced closure of some civil organizations that used to work in the field of human rights or provision of safe houses for women.¹⁵² Moreover, the report of other human rights organizations, including the Rawadari organization, has reported that 47 members of civil society, media, and human rights defenders have been arrested, detained, threatened and tortured for protesting, criticizing and propagating against the Taliban in the first six months of this year.¹⁵³

Audit, Investigation, and Surveillance of Offices and Activities of Organizations

Interviews with members of the civil society in this research show that the police of PDs, intelligence, and local officials of the Taliban conduct sudden visits and investigations of the offices of organizations and monitor their members and activities in the areas under their

¹⁵⁰ A civil society activist, Kabul, interviewed for research May 2023

¹⁵¹ Head of a civil institution, Kabul, interviewed for research, May 2023

¹⁵² United Nations.. Title of the document (Document No. N2325887). Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/258/87/PDF/N2325887.pdf?OpenElement> (Accessed December 2023)

¹⁵³ RW Advocacy. (2023, August). AFG Human Rights 2023 [PDF]. Available at: https://rawadari.org/wp-content/uploads/2023/08/RW_AFGHumanRights2023_Dari.pdf (Accessed December 2023)

control. According to the Non-Governmental Organizations Law, no official body or department has the right to inspect and enter non-governmental organizations without the official permission of the court. The Taliban look at the offices and members of non-governmental organizations with suspicion and think of them as spies and puppets of Western countries. Hence, they are constantly under surveillance. A director of a non-governmental organization that operates in Kabul said: “Taliban, under the pretext of checking whether we are doing anything against moral values here or to check what activities we are busy with, enter our organization, and they even check cupboards and rooms of our office. Therefore, we are tired of this situation, but we cannot complain to anyone because they are in charge of the security area near our office. They can do whatever they want against us.”¹⁵⁴ Moreover, in the past two years, the abuse and harassment of members of civil society organizations have been repeatedly reflected in the reports of international organizations. In the recent guidelines of the Ministry of Economy of the de facto government, lack of permission for all government offices has been emphasized, and they are directed not to interfere and investigate the affairs of Non-Governmental Organizations. In addition, they only allow the observation and surveillance of these organizations with the coordination of the Ministry of Economy.

Right to Freedom of Association in Islamic Sharia

The third paragraph of Article 23 of the Universal Islamic Declaration of Human Rights recognizes the right to establish associations. This article states: “Everyone has the right to freedom of peaceful assembly and association in accordance with national legislation.”¹⁵⁵ According to the general rule of jurisprudence, “The Principle of Original Permissibility (Ibahah)”¹⁵⁶ means that everything is permissible except when there is a Sharia text against it. So, if there is no Sharia ruling regarding permissibility or impermissibility of any activity or action, then under Sharia, there is nothing wrong in doing or not doing that, and in a similar manner, there is no ruling in Sharia texts that approves or rejects the establishment of civil associations. On the other hand, the Principles of Maqasid al-Sharia (*the good purposes or benefits that the Sharia is expected to secure for an Islamic society*) and Masalih al-Mursala (Considerations of Public Interest) are also the principles that help the Islamic ruling system in creating or issuing rulings following the spirit of Sharia. Therefore, civil organizations in Islamic societies can serve as a bridge, liaisons between people and government to bring the people’s voices to the authorities’ ears and ensure the rule of law, justice, and social development, besides contributing to the progress of the society.¹⁵⁷ Nowadays, various social spheres have immensely expanded, so governments alone cannot pay full attention to them. Therefore, people should be able to participate in the development of society by using the right

¹⁵⁴ Director of a civil society organization Kabul, interviewed for research, May 2023

¹⁵⁵ Universal Islamic Declaration of Human Rights. (1981). Universal Islamic Declaration of Human Rights, Article 23.

¹⁵⁶ “The originality in things is legalization.” (n.d.). Available at <https://repository.najah.edu/items/e098f115-4b91-4933-8300-99aff179438a>, (Accessed December 2023)

¹⁵⁷ “Adaptive Learning Systems.” (n.d.). In Encyclopedia of Information Science and Technology. Available at https://link.springer.com/referenceworkentry/10.1007/978-3-319-64683-1_18 (Accessed December 2023)

to establish associations and civil organizations. This issue has been described in previous discussions as well.

Right to Freedom of Expression

The right to freedom of expression is one of the human rights that lays the foundation and support for other civil and political rights in society. The right to freedom of expression was one of the most valuable and historical achievements of the twenty years of the former republic government in Afghanistan. After establishing an interim administration in 2001, the first press law was approved and enforced in light of Article 31 of the 1964 Constitution. This law laid the foundation for establishing and expanding hundreds of print publications and audio and video media in Afghanistan in a short period. Later, this law was amended under the Mass Media Law of Afghanistan and was approved in the Parliament of Afghanistan in 2013. According to some media activists interviewed in this research, the presence of international forces, to a greater extent, ensured that some vague articles of this law were not used against the restriction of freedom of expression. After the Taliban returned to power, they did not initially oppose this law; however, one of the structures in this law, namely the *Commission on Exploration of Media Violation*, has been restructured with the involvement of six journalists and members of media networks. A new plan for this law was made in 2020, but before its approval, Afghanistan experienced a recent political transformation. Since freedom of expression requires free access to information, the Access to Information Law was approved by the 2004 Constitution and enacted in 2014. In addition to that, based on this law, access to information in government offices became legal, and this law was very effective for journalists' access to information from government authorities. However, there were still challenges in its practical implementation until the fall of the republic government.

Rights to Freedom of Expression Under the Taliban

After the Taliban regained power in Afghanistan, freedom of expression faced many restrictions and challenges, including working restrictions for journalists and female media workers imposed on the first day of the Taliban's arrival in Kabul. These restrictions soon caused the arrest of and threats to journalists and media owners, many of whom were forced to leave the country. According to Reporters without Borders, 8,290 men and 2,490 women were working in the newsrooms of Afghanistan before August 15, 2021.¹⁵⁸ By 2021, about 547 print media outlets had been registered in Afghanistan. Moreover, before the fall of the republic government, 150 television channels and 307 radio stations were operating in Afghanistan, and about 31 news agencies were active.¹⁵⁹

¹⁵⁸ Reporters Without Borders. (n.d.). Afghanistan. Available at <https://rsf.org/en/country/afghanistan>

¹⁵⁹ Reporters Without Borders. (2024, March 10). Country: Afghanistan. Available at <https://rsf.org/en/country/afghanistan>

In the first three months of the Taliban rule, 43 percent of about twelve thousand Afghan media workers could not continue their work. The continuous escape of professional people from the media continues today.¹⁶⁰ More than 80% of female reporters have left their jobs. Moreover, since the beginning of the Taliban rule, half of the 547 registered print media outlets have disappeared and stopped their activities. Out of 150 television channels, only 70 are currently operating, with restrictions. In addition to that, out of 307 radio broadcasting stations, only 170 of them are currently operating, with limited functionality, and out of 31 news agencies, only 18 of them are presently active.¹⁶¹

The recent UNAMA report on the torture and ill-treatment of prisoners in the detention centers of the Taliban de facto administration indicates that 8% of the 1600 detainees who have been ill-treated and tortured by the Taliban are media activists.¹⁶² The United Nations Special Rapporteur on the situation of human rights in Afghanistan, Mr. Richard Bennett, in his recent report to the United Nations General Assembly, mentioned the restrictions and dire situation of Afghan journalists under Taliban rule. In this report, he states: “The increase in suppression of journalists has endangered the freedom of expression in this country. Moreover, access to information has been a challenge for journalists; they face the risk of arrest, threats, and imprisonment. And women journalists face more restrictions than men, including termination of their duties.”¹⁶³

Rights to Freedom of Expression in Islamic Sharia

Islam has confirmed freedom of speech by enjoining good and forbidding evil. It is mentioned in the Qur'an:

ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ

Translation: “Invite to the way of your Lord with wisdom and good instruction, and argue with them in the best way. Indeed, your Lord knows most who has strayed from His way, and He is most knowing of who is [rightly] guided.”¹⁶⁴

It is also stated:

«كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ»

¹⁶⁰ Reporters Without Borders. (2024, March 10). Country: Afghanistan. Available at <https://rsf.org/en/country/afghanistan>

¹⁶¹ Reporters Without Borders. (2024, March 10). Country: Afghanistan. Available at <https://rsf.org/en/country/afghanistan>

¹⁶² United Nations Assistance Mission in Afghanistan. (2023). Treatment of Detainees. Available at https://unama.unmissions.org/sites/default/files/unama_report_-_eng_-_treatment_of_detainees_sept_23_0.pdf

¹⁶³ United Nations. (n.d.). N2325887. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/258/87/PDF/N2325887.pdf?OpenElement>

¹⁶⁴ Quran, Surah Al-Nahl, verse 125, Available at, <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

Translation: “You are the best nation produced [as an example] for mankind. You enjoin what is right, forbid what is wrong, and believe in Allah.”¹⁶⁵

There are narratives from the Prophet of Islam and the rightful caliphs supporting freedom of expression, such as Abu Bakr, in his first speech, asking people to hold him accountable for his actions. Furthermore, it is narrated from Umar that when he was told to fear Allah, he thanked that person and said, May Allah have mercy on the person who corrects our faults.¹⁶⁶

Freedom of expression is not an absolute right in Islam. No person has the right to use this right to invite people to another religion or innovation in the Islamic system. Further, slander, which means making false and baseless statements, insulting Islamic religious sanctities, as well as other religions and cults, is not permissible.¹⁶⁷ Similarly, it is not permissible in Islam to publish and display topics that encourage people to act against human chastity and dignity because according to the principle of Islamic jurisprudence, “كل ما أدى إلى حرام، فهو حرام,” that is, anything that leads to Haram is considered Haram. For instance, it is not allowed to publish stimulating music, images, or pornographic films that encourage young people to commit acts against purity. Nevertheless, it is noteworthy that some of the jurisprudential texts that are taught at schools and madrassas, as well as fatwas, express an understanding of sexual issues.¹⁶⁸

Rights to Freedom of Expression in Afghan Culture

Being frank and not afraid of telling the truth is one of the desirable traits in all cultures of the Afghan people. Moreover, writing poetry and reflecting on society’s problems through poetry has also been one of the cultural contexts of freedom of expression in Afghanistan throughout history. There are also terms and sayings about being frank, telling the truth, and not being afraid of telling the truth. For example, among the Pashtuns, it is called “Spena Khabara Kawal,” which means telling the truth without covering and fearing the target. In the Afghan culture, one of the qualities that can make a person popular among people around him is having the ability to freely speak and express truth in the presence of powerful government officials. In addition, those who openly defend people’s rights in their statements or advocate for justice are recognized as long-lasting figures and heroes of the people in the Afghan culture.

¹⁶⁵ Quran, Surah Al-Imran, verse 110, Available at, <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

¹⁶⁶ "The Islamic Emirate and Its System." (n.d.). Wikipedia. Available at https://en.wikipedia.org/wiki/The_Islamic_Emirate_and_its_System (Accessed December 2023)

¹⁶⁷ Quran, Al-Imran, Available at, <https://surahquran.com/english-aya-110-sora-3.html> (Accessed December 2023)

¹⁶⁸ Mohammadi, F. (n.d.). Limitation of Freedom of Speech in Islam. Available at <https://www.ghalib.edu.af/ckeditor/kcfinder/upload/files/%D8%BA%D8%A7%D9%84%D8%A8%D9%81%D8%A7%DB%8C%D9%84%D9%81%D9%88%D8%B1%D9%85%D9%87%D8%A7%D9%81%D8%B5%D9%84%D9%86%D8%A7%D9%85%D9%87/18/10.pdf> (Accessed December 2023)

Part Four- Interviews

Conclusion (Compilation) of the Respondents' Viewpoints

In this part of the research, 25 experienced members of civil society, media, religious, and academic fields have been selected for interviews. These included seven male and one female religious scholar. Three of the religious scholars are affiliated with the Taliban. The rest of the Islamic scholars were independent or university lecturers. There was ethnic, religious, geographical, and gender diversity within the population interviewed for this research. The interviewed religious scholars have completed specialized studies in religious sciences inside Afghanistan or in foreign Islamic countries, including Pakistan and Iran. All interviewees have been well-known and active persons in Afghan society. Almost all the interviewed people have faced various security problems and threats in the past, and some of them faced difficulties after the Taliban came to power as well. Five of the religious scholars who were interviewed said that due to the security threats they faced from the Taliban and ISIS inside Afghanistan, they stayed abroad after the Taliban recaptured power. One of these scholars resides in Turkey, one in America, one in Canada, one in Norway, and the other in Pakistan. Three of the religious scholars to whom the questionnaire was shared live inside Afghanistan and two of them have close connections with the Taliban de facto government. The other supports the Taliban but has no official position.

Most of the interviewees who were interviewed from the background of media and civil society said that they currently live outside of Afghanistan due to security threats. Meanwhile, these civil and media activists have maintained their cooperation with civil organizations, human rights defenders, and international organizations and are among the active members of these networks. Five persons of these civil activists live in Afghanistan. Among the three religious scholars affiliated with the Taliban who were invited for the interview, two refused to answer the questions without reason, despite being familiar with the researcher's academic background and human rights occupation. One of them, who received the initial e-mail and the questionnaire and promised to participate in the research, ended his communication, and the second did not reply or respond after exchanging initial introductory communications through WhatsApp. The researcher has found that the person who had communicated with him via e-mail has an important position with the de facto government of the Taliban, and it is possible that answering the research questionnaire, which includes inquiries about the policies of the Taliban regarding the restriction of civic space, are troublesome for him, so he has not participated in the interview.

Regarding the person who was contacted through WhatsApp, even though he does not have an official position with the de facto government of the Taliban, he is the head of a prominent religious Madrassa with close relations to the Taliban's leadership and probably preferred not

to answer the questions. A longstanding member of civil society who is currently in exile in the United States and had received the questionnaire apologized for participating in this research due to his conservatism. The research questionnaire included five open-ended questions, finalized after consulting with three academics and some civil activists.

These questions deal with the fundamental question of the research about the state of civic space after the collapse of the republic on August 15, 2021. The questions are about the components of civic space, such as the right to freedom of speech, freedom of assembly, freedom to establish civil associations, and the Taliban's religious approach. For a better understanding of the questionnaire, brief introductory explanations of each question have been provided. The questionnaire was sent to each interviewee in their fluent language via email or WhatsApp. The interviewees were reminded that they could share their responses with the researcher in written or audio form. They were also reminded that stating their names in the research report is optional for security reasons. Out of a total of 22 interviewees, three religious scholars shared their responses with the researcher in audio form. The rest of the interviewees sent written responses via email or WhatsApp. The researcher carefully listened to and transcribed the voice responses for analysis. Some interviewees were lenient in providing their written responses and answered some questions very briefly. A follow-up contact was made with them via WhatsApp or email, and more clarification was requested for the questions with brief responses. In addition, four interviewees shared their viewpoints with the researcher on May 28 and 29, 2023, through two online group discussions.

A Summary of the Viewpoints of Interviewees

Civic Space in Afghanistan After the Fall of the Republic

Most of the interviewees, regarding the general state of the civic space in Afghanistan after the fall of government on August 15, 2021, evaluated the Taliban's approach as strict and restrictive towards civil activities. Regarding the question of whether the rights and freedoms on which the civic space is formed have any basis in Islamic law and why the Taliban oppose these freedoms in Afghanistan after recapturing power, the interviewees provided different ideas and views; as Dr. Amin Ahmadi, whose ideas are stated in detail in the second part of this research, in a part of his statements said: "From a political point of view, every authoritarian regime, whether religious or non-religious, is in favor of controlling the people and is against rights and freedoms."¹⁶⁹

¹⁶⁹ Dr. Amin Ahmadi, Norway, interviewed for research, April 2023

Mr. Mohammad Moheq, who a well-known scholar and analyst in the field of Islamic sciences in Afghanistan and the editor of Hasht Sobh newspaper, says, “Islam emerged in the pre-modern period, and Islamic law was primarily compiled in the Middle Ages by various schools of jurisprudence. Therefore, as we understand, the contemporary concepts of rights and freedoms did not exist with the same precision in that period. But if we look from the perspective of the philosophy of law and keep the time difference in mind, we can find similar cases in Islamic jurisprudence with what is stated in modern laws, and between these rights and freedoms in the modern age and what was declared in Islamic Sharia in the past, we can see the relationship and origination. Today, many Islamic scholars believe that the spirit of modern laws has many similarities with the spirit of Sharia, which was called the purpose of Sharia in the past. Therefore, Islamic societies' adherence to conventions that protect modern rights and freedoms is compatible with the Islamic Sharia, and Muslims should not have any concern in this regard. The Taliban's opposition to the fundamental rights and freedoms of people is primarily due to political issues, and most of the Taliban leaders in their private lives act against their official policy. The political intention of this group taking such actions is to give the motive of religious war under the name of Jihad to their fighting forces, which are composed of people with little knowledge and radical ideology. However, there is a possibility of interpretations of religious texts in an extreme and strict style in every religion, and the Taliban also provides a religious justification for their actions”.¹⁷⁰

One of the religious scholars who has served as a preacher in one of the largest mosques and also as a professor of Islamic sciences in Kabul for several years and currently lives in an Islamic country as he left Afghanistan after the Taliban recaptured power, believes that the republic government neglected Islamic values. He said: “The tendency of anti-religion at that time caused the growth of extremism and strictness on the civic space in Afghanistan by the Taliban. Imprisoning thousands of people who fought against the presence of the US and its allies, torturing, and mistreating them, and blindly bombing houses and even mosques were indicators of oppression during the republic government. Therefore, the Taliban do not give any importance to civil activities and civic space as they believe foreign countries established these organizations to diffuse anti-Islamic culture. During republic government, the civil organizations were silent about the atrocities against them and didn't do anything good for them.”¹⁷¹

One of the civil society leaders in northern Afghanistan who emmigrated to a European country after the government's fall responded: “The topics of discourses and civic participation, freedom of expression and civil rights are stated in Islam. But the Taliban's approach to the civic space is not according to Islamic teachings.”¹⁷²

One of the experienced and well-known professors at Kabul University says civic space is related to freedom. “Indeed, the message and motto of Islam is freedom. Islam considers

¹⁷⁰ Mohammad Moheq, Canada, interviewed for research, May 2023

¹⁷¹ Afghan religious scholar, Turkey, interviewed for research, April 2023

¹⁷² Afghan civil activist, Germany, interviewed for research May,2023

freedom a legitimate human right and describes freedom as a goal and constructive development, which means up to the extent that it does not harm others. Islam restricted the boundaries of freedom while discussing freedom. Islam considers freedom a natural and legitimate human right, but it has a limit for practicing freedom based on rationality. What has severely restricted freedom in Afghanistan and by looking at the current situation are 1) political restrictions, 2) security restrictions, 3) sociocultural restrictions, and 4) religious restrictions".¹⁷³ According to the professor, political restrictions were applied against civil liberties even during the republic government because they feared the people's voice. Security restrictions and threats are also considered a primary obstacle to civil activities, especially litigation for human rights and freedom of expression. He believes that like the actors of the republic government, the Taliban are against civic space. In terms of religious restrictions, he thinks these restrictions should not exist except for insulting sacred holy objects and disrupting the order of society.

A religious scholar who is a former member of the Afghan Council of Scholars (Ulama) divides the Islamic world into two parts: one is the part that accepts innovative and modern views, while the other is the group that are still trying to reform and control society with dogmatic religious interpretations. He said: "Taliban's interpretation of Islam is a very narrow-minded one as it considers all civil phenomena as western phenomena and in contrast with Islam."¹⁷⁴

One of the professors at Kabul University, who is a well-known legal expert, said: "I believe there is civic freedom in Islam, which is different from its definition by liberalism, but Taliban are acting more extreme in this regard."¹⁷⁵

Ms. Najiba Ayoubi, one of the well-known women's rights activists and director of a media network in Afghanistan, says: "We must understand the essence of religion; the basis of opposition is superficial scholars who only have a limited understanding of religion and think that their views are the whole of Islam, It is based on these old fatwas that narrowed the space for religious people and caused the public people to hate the religion. Jurisprudence needs to be revised, and many issues will be changed."¹⁷⁶

One of the activists for the rights of people with disabilities who works to serve these people inside Afghanistan considers the existence of civic space in society to be necessary for access to justice and ensuring people's rights. He says: "In Islamic narrations, it is said that two classes of people will go to hell, one is the oppressor who oppresses, and the other is oppressed who does not want his right and does not defend it; it means there should be litigation and justice in the society and the rights of individuals should be secured; therefore the civil organizations are necessary for justice and litigation."¹⁷⁷

¹⁷³ One of Kabul University professors, interviewed for research April 2023

¹⁷⁴ Afghan religious scholar in exile, Pakistan, interviewed for research May 2023

¹⁷⁵ Kabul University professor, France, interviewed for research May 2023

¹⁷⁶ Najiba Ayoubi, London, interviewed for research April 2023

¹⁷⁷ Afghan Human Rights activist, Kabul, interviewed for research April 2023

Mr. Sayed Ali Hussein, a university professor, said, "I believe the components of civic space are not in contrast with the Sharia. Islam as a great identity of the big societies can be a deal of this religion with the other world."¹⁷⁸

Mr. Mohammad Qasim Rahmani, who is a defender of human rights and a media expert, said about the confrontation between traditional ideas and modern civil values: "During the past hundred years, from the kingdom of Amanullah Khan to the period of the leftists and the recent period of the Republic government the conflict of tradition and modernity has always existed in Afghanistan. Tradition means the approaches considered extraterrestrial and spatial while modernity considers every value in a temporal and spatial community."¹⁷⁹

Civic Space and its Advantages in Society

Regarding the necessity of civic space and civil society activities, most interviewees believe that civic space is urgent to ensure justice and fulfill people's demands in all Islamic and non-Islamic societies. Research studies also show that there are areas free from the influence and domination of governments in Islamic law where management is left to the people themselves.

Regarding civil organizations and civic space in society, Dr. Amin Ahmadi says: "These institutions help people have more ability and be more effective in determining local and national policies to meet their demands and needs. Society becomes stronger through these organizations, and they gain the power to reform and change peacefully and without violence. Finally, they can defend the rights and freedom of the individual against the government".¹⁸⁰

Studies show that civil organizations and a proper civic space can strengthen the relationship between the government and the people and increase public participation. Ms Najiba Ayoubi said: "In societies where the relationship between the government and the civil organizations is based on principles, regulations, and values, it can create more participation and cooperation. However, the active presence of civil organizations in post-crisis democracies can expedite the progress of social changes."¹⁸¹

Some of the research participants believed that civil activities in Afghanistan were mainly formed due to the encouragement and support of the international community rather than due to the natural social trends of Afghan society. One of the legal and media experts said: "The presence of the International Community in Afghanistan was extremely effective in the development of freedom of speech and civil activities because the radical, conservative, and traditional circles inside the republic government were working against the values of human

¹⁷⁸ Sayed Ali Hussein, Canada, interviewed for research June 2023

¹⁷⁹ Qasim Rahmani, Canada, interviewed for research June 2023

¹⁸⁰ Ahmadi, interviewed for research, June 2023

¹⁸¹ Ayoubi, interviewed for research, June 2023

rights and limiting the civic space at that time, as they were making efforts to amend some of the laws to limit the civic space.”¹⁸²

Most research participants evaluated the growth of institutions and civic space under the republic government as due to the legality of civil activities based on the constitution and other enacted laws. They considered the lack of a constitution and the suspension of other laws as a historical setback and the main reason for the restriction of the civic space under the Taliban regime in Afghanistan. One of the human rights defenders and legal experts said: “Afghanistan had a constitution as article 2 of the constitution stipulated (The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in exercising and performing their religious rituals.) The fundamental rights and duties of the citizens were included and ensured in the articles (22-59) that civil organizations and different unions have been established based on those articles. The main duties of the organizations and unions include public awareness, capacity building, research, charity programs, and economic and social programs. Unfortunately, such organizations became meaningless after August 15, 2021. Civil society organizations and human rights defenders, especially women’s rights defenders, cannot raise their voices, and it is not unlikely that the civic space will disappear soon.”¹⁸³

Most of the interviewees were doubtful regarding the role of traditional civil organizations under the Taliban because the radical ideology of the Taliban does not give any Sharia value to the decision-making of conventional organizations such as Jirga and tribal councils. One of the professors says: “By taking into consideration the current situation as the environment is not helpful for the activities of modern civil organizations, there is not much hope for initiating civil activities in the form of traditional acts under the title of Jirga and tribal councils. The ruling condition made the return to the people and their wishes impossible.”¹⁸⁴

Right to Peaceful Assembly

All interviewees agree that the right to peaceful assembly is a known legal right of people according to the law. A religious scholar says: “This is a natural, Islamic, and inborn right, but I think the Taliban do not pay attention and do not accept this freedom due to three reasons. First, the Taliban have low knowledge of the religion; they deliberate the *ijtihad* of *mujtahids* to be the same as the text of the Quran and do not accept any change of it. Second, they are afraid of different groups in society and think if the society is being divided under different names, it is better not to let the division of it. Third, unfortunately, in 20 years, we have not been able to establish a civil society that consolidates the aspirations of the Afghan people and becomes a model for Afghan society. The ideological weakness of the Taliban is another problem.”¹⁸⁵

¹⁸² Afghan legal expert, Tajikistan, interviewed for research, May 2023

¹⁸³ Anonymous, Turkey, interviewed for research, April 2023

¹⁸⁴ A professor of Kabul University, France, interviewed for research June 2023

¹⁸⁵ A religious scholar in exile, Turkey, interviewed for research April, 2023

Based on most interviews, dictatorial governments always create obstacles for civil and political organizations. These types of governments are afraid of people's voices. Therefore, the Taliban prevented peaceful assemblies of women. The space for discourse and criticism has been closed, and no one can criticize, even on social media. Dr. Ahmadi says: "Due to the features mentioned earlier, Taliban are mainly against any independent and modern criticism. Indeed, like any other repressive government, they are afraid of violent confrontation with non-violent civil protest, and that is why they are careful in using extreme direct and obvious violence while confronting such protests."¹⁸⁶

Studies have shown that the Taliban government's treatment of civil assemblies sometimes differs from public policy and their clear opposition to civil activities. In some cases, they allow allied organizations or groups to hold their gatherings freely. Still, in other cases, when it comes to human rights issues, women's rights, and political participation, they prevent it by using violence. One of the religious scholars who is in exile says: "Violent treatment against freedom and protests and the right to freedom of speech is due to the ruling regime's fear, ignorance, lack of academic management and primitive understanding of the religion and human values."¹⁸⁷

A former professor of Kabul university says: "I think the restriction of the assemblies is due to fear of them. It means they think such gatherings will change people's thoughts and encourage them to fight against injustice and inequality. On the other hand, the current regime does not consider itself a part of the people and thinks that the people do not trust them. So, this lack of trust created a confrontation between the people and government such as civic movements and movements for freedom."¹⁸⁸

Right to Freedom of Expression

The history of Islam shows that Islam brought human freedom from slavery and captivity and freedom of speech and thought in a society where enslaved people and women did not have the right to freedom of speech. The way the Prophet of Islam listened to people's complaints and protests and the related narrations from the right caliphs can be an excellent example. In addition, the Islam Prophet emphasized and advised several times to speak the truth against the dishonesty of the rulers and said: لَا يَمْنَعَنَّ رَجُلًا هَيْبَةُ النَّاسِ أَنْ يَقُولَ بِحَقِّ إِذَا عَلِمَهُ

Translation: "Indeed, fear of people should not prevent a man from speaking the truth if he knows it."¹⁸⁹ He also says: فَضْلُ الْجِهَادِ كَلِمَةُ عَدْلٍ عِنْدَ سُلْطَانٍ جَائِرٍ

Translation: "The best fighting (jihad) in the path of Allah is (to speak) a word of justice to an oppressive ruler."¹⁹⁰

¹⁸⁶ Ahmadi, interviewed for research

¹⁸⁷ Anonymous, Kabul, interviewed for research April, 2023

¹⁸⁸ Afghan Professor, France, interviewed for research April, 2023

¹⁸⁹ Termizi (Hadith No. 2191) Ibn Maja (Hadith No. 3997)

¹⁹⁰ Termizi (Hadith No. 2174) Abu Dawood (Hadith No. 4344), Nesayee (Hadith No. 4209)

Another point that should be taken into consideration in the issue of freedom of speech is that when freedom of speech is considered one of the prominent Sharia rights of an individual, then no person in the Islamic society should be maltreated for expressing their idea and opinion because they have done what the Islamic law has allowed them to do. For a better understanding of this issue, it is good to read a story of Umar: One day, Caliph Umar, during his sermon to the people, was talking about the women's (Mehr) dowry. A woman stood up and rejected his opinion. Umar not only did not prevent her from expressing her opinion and did not insult her, but by admitting the truth of that woman's words, he bravely announced: أصابت امرأة و أخطأ عمر. Translation: The women were right, and Umar was wrong.

One of the professors who participated in the research said: "freedom of expression is the freedom of wants, expectation of justice and equality. Freedom of speech is the biggest alarm in challenging power and sovereignty, and even this phenomenon has often led to the fall of powers and governments."¹⁹¹

From the point of view of one of the human rights and civil society activists who continued civil activities inside Afghanistan after the collapse of the government, the people need to understand the place of freedom in Islam. He said that "freedom of speech and criticism initially has a special place in the Islamic system, even though this issue is something more than freedom from the point of view of Islam and an Islamic government. Islam considers giving opinions and criticism among the compulsions and obligations because whenever a person observes something wrong, they must speak about it freely and should not remain silent".¹⁹²

Key Findings and Conclusion

The conclusions of this research have been organized based on questions that have been considered for each of the four sections, resulting in the main answer to the research question, namely, the status of civil space under Taliban rule.

In the first section of the research, which studies the book "The Islamic Emirate and Its System" as an ideological source of the governance of the Taliban regime, efforts have been made to obtain

answers to the following questions:

1. Does the Islamic governance system as described in the book "The Islamic Emirate and its System" have the potential to adapt to contemporary governance in the world?
2. What is the intellectual approach of "The Islamic Emirate and its System" regarding civic space elements (freedom of expression, association, and assembly)?

¹⁹¹ Anonymous, Kabul, interviewed for research April 2023

¹⁹² Civil Society Activist, Kabul, interviewed for research, May, 2023

The findings of this research indicate that the book "The Islamic Emirate and its System" is based on the theories of Islamic political jurisprudence, mapping out the structural dimensions of the Taliban's governance system. This book draws from the theories of classical Islamic scholars who have addressed Islamic governance issues since the eighth century AD. The most important features of Islamic political jurisprudence are the Amir (leader), Bay'ah (pledge of allegiance), Shura (consultation), government structure, propagation of virtue, and prevention of vice. There is no participation of women and the public in the selection of the Amir, decision-making, and legislation in this system. In this system, religious and minority rights do not enjoy equal status. Sharia governs all aspects of society. It is observed that in this system, universal values such as human rights, elections, civil society, political parties, and freedom of expression are considered external and non-Islamic phenomena. It has become clear that one of the fundamental goals of the book "The Islamic Emirate and its System" is to shape the structure of the Islamic governance system in the geography of Afghanistan, while previous writers have generally articulated Islamic political jurisprudence in a more general and idealistic manner.

The study revealed that contemporary Islamic scholars have proposed more moderate views regarding the necessity of statutory laws, women's participation, minority rights, and the involvement of the general public in political affairs, elections, civil society, political parties, and so forth in recent years. This indicates that Islamic political jurisprudence requires constructive engagement with the needs, progress, and complexities of the contemporary world. It became clear that organizing the political affairs of the Muslim community has been left to their discretion and initiative, just as Muslims used various methods in selecting Islamic caliphs after the death of the Prophet.

It was evident that considering the spirit, objectives, and interests of Sharia can facilitate the resolution of new and contemporary issues in Islamic governance. Regarding the ideological approach of the book "Islamic Emirate and its System" concerning the components of civil society, research findings indicate that the perspective of this book is rigid and restrictive in these matters. For example, publicly criticizing the Amir and officials of the Islamic Emirate is religiously prohibited. The importance and role of civil society institutions are not addressed in this book. Women's participation alongside men in society, and religious pluralism, are also prohibited. The eradication of customary practices and the imposition of this in Afghan society as imported traditions is one of the significant points stated in this book and justifies the Taliban's actions in suppressing civil activities, freedom of expression, and peaceful assemblies.

In this part of the research, the perspectives of contemporary Islamic scholars such as Qaradawi and Al-Jabri regarding the role and value of women's participation, the presence and voice of religious and ethnic minorities, elections, and other contemporary issues have been briefly mentioned. However, it is by no means sufficient to expect the research and comprehensive discourse on this matter to continue, as the Taliban are influenced by Deobandi Madrasas, which are opposed to contemporary religious views.

The research findings in this discussion clearly indicate that Islamic political jurisprudence has remained stagnant in the past and requires study, research, and academic discourse in Islamic societies to provide better grounds for governance for future generations.

In the second part of the research, which focuses on the examination and study of the commands, decrees, and guidelines of the Taliban leader, efforts have been made to find answers to the following two questions:

1. To what extent are the decrees, edicts, and instructions of the Taliban leader influenced by the views presented in the book "Islamic Emirate and its System"?
2. What is the approach of the decrees, edicts, and instructions of the Taliban leader regarding civil society and civic space?

The findings indicate that the legislative decrees constituted a small portion of Afghanistan's legislative documents in the past. It was observed that the history of issuing strict decrees dates back to the communist regime's rule in the 1980s in Afghanistan. It became clear that the decrees, edicts, and instructions of the Taliban leader cannot in any way fill the legal vacuum resulting from the annulment of laws of the past. It was seen that issuing these decrees is a means to achieve the ideological goals of the Taliban reflected in the book "Islamic Emirate and its System". Strengthening the increasing authority of leadership, and regulating internal system, including all judicial, administrative, and military sectors, were recognized as the fundamental goals of issuing decrees and edicts of the Taliban leader. It was understood that some decrees were also issued to facilitate the people's relationship with the de facto regime. However, international organizations' reports and media news indicate systematic violations of human rights, especially women's rights, suppression of civic space, injustice, oppression, misconduct towards people, arbitrary arrests, high numbers of prisoners, and ill-treatment towards them.

From studying the decrees and edicts, it became clear that the Taliban leader has significantly restricted civic space in Afghanistan through more than ten explicit decrees and edicts. Among the major ones are the order to change the previous Attorney General Office to the monitoring administration of the implementation of decrees and edicts of the Taliban leader, the prohibition of filming and photography of the execution scenes by courts, preventing publishing of official documents on social media, establishing a commission to review past legislative documents, mandating women's Hijab, appointing Taliban fighters to government positions, and prohibiting criticism of Taliban authorities. It was also stated that it is not only these decrees and edicts that have limited civil space, but verbal directives and actions by the Taliban, such as 86 restrictions on women's participation in the social sphere by the de facto administration so far. The decrees and edicts of the Taliban leader have led to continuous surveillance of media, printed press, and social networks, preventing people from freely expressing their demands. The right to peaceful assembly and the sustainability of civil activities have also been withheld from people. Research findings indicate that Afghanistan's legal system has shown considerable growth in the past century, and Afghanistan's human

rights commitments were once part of legislative resources, which unfortunately are not evident in the decrees and edicts of the Taliban leader.

In the third part of the research, which delves into the background and status of civil society and the state of civic space in Afghanistan in the past two years, an attempt has been made to address the following two questions:

1. What is the background and status of civil society and civic space in Afghanistan in terms of the enlightenment of religious values, commitments to human rights, national laws, and Afghan culture?
2. What is the situation regarding freedom of expression, the right to establish associations, and the organization of peaceful assemblies under Taliban rule?

The research findings in this section indicate that civil society, in its traditional and indigenous forms, has existed in Afghanistan for hundreds of years and has played a significant role in society in the absence of governments and established laws. Studies in this research clearly demonstrate that contemporary civil society in Afghanistan, especially in the past twenty years after the 2001 Bonn conference, has shown remarkable growth in all areas, including research, advocacy, public awareness raising, and the provision of humanitarian services. In the past, numerous laws and international human rights commitments regulated civil activities and space in Afghanistan, which have currently been invalidated by the Taliban's de facto regime, and there is still no clarity regarding Afghanistan's human rights commitments. It became evident that civil activities during the last republic regime initially benefited from the support of the political system and government but lacked the necessary support in the second stage, covering the period from 2014 until the collapse of the previous regime, and did not receive attention to its demands and advocacy. Additionally, it was evident in this research that civil society has deep roots in the national culture and religious narratives of Islamic Sharia in Afghanistan. Islamic Endowment mechanism (Waqf), Worship houses of Sufis (Kahnuqah), trade unions, literary councils, collective and voluntary works, and people's cooperative and benevolent activities were recognized as manifestations of civil society and its activities in Afghanistan.

Regarding the second question, namely the status of civic space under the Taliban administration, research findings indicate that after August 15, 2021, civic space in Afghanistan has faced numerous restrictions and challenges, ultimately being recognized as closed space according to assessments by some international organizations such as CIVICUS. It was found that the right to establish civil organizations has been restricted in the past two years, and the de facto government has deprived thousands of civil institutions of their right to operate. In this research, based on reports from international organizations and the United Nations Special Rapporteur on the Human Rights situation in Afghanistan, it was noted that threats, torture, harassment, and persecution of civil activists, human rights defenders, and journalists continue. Research findings indicate that while Islam mandates freedom of expression, the right to peaceful assembly has been withheld from people, and participants in gatherings are punished on charges of rebellion in the name of Sharia. According to recent reports, such as the UNAMA report on the current situation of prisoners in Taliban detention centers, 24 percent of

individuals subjected to torture and misconduct are members of civil society and media journalists.

In the last chapter of this study, which focused on interviews with 23 individuals including university professors, Islamic scholars, civil activists, media representatives, and human rights defenders, an attempt was made to gather their perspectives on the following two questions:

1. What is the status of freedom of expression, the right to establish associations, and the launch of peaceful assemblies under the rule of the Taliban?
2. How does the Taliban deal with civil society and the components of civic space, whether it is compatible with true Islamic guidance or not?

Regarding the first question, interviews revealed that despite security and political challenges, civil society's significant role and relatively suitable and lawful civic space in conveying the people's voices to the government and the global community has been established in Afghanistan over the past twenty years. From the perspective of the scholars interviewed, it became clear that the Taliban's opposition to the basic rights and freedoms of the people, including civic space, primarily stems from political motives, as in any religion, there can be rigid interpretations of religious texts, and the Taliban have created a religious cover for their actions. It was observed that some individuals interviewed were dissatisfied with the shortcomings of the previous government and civil society activities, while civil society organizations were actively engaged in advocacy to reduce violence and civilian casualties, promote prisoners' rights, and other national issues through specific working groups.

It was also noted that civic space no longer exists under Taliban rule. Research findings indicate that one of the factors contributing to the growth and development of civil society in the past twenty years has been the presence of international forces and financial support for civil activities. The findings also show that traditional civil institutions are not valued under Taliban rule because the Taliban solely aim to strengthen their religious authority and monopolize power through their own members.

Regarding the second question, research findings from the perspective of religious scholars indicate that civil society is not a phenomenon contrary to religion because the existence of civil activities allows individuals to have more capabilities and an active role in determining local and national policies. The findings also indicate that authoritarian governments always obstruct civil and political formations, fearing the rise of people's voices. Hence, under the current de facto administration of the Taliban, peaceful gatherings are prevented, the discourse space is narrowed, and individuals have no right to criticize on social media. The findings show that the components of civic space, namely freedom of expression, the right to establish associations, and the launch of peaceful assemblies, do not contradict Islamic guidance.

It was highlighted that the Taliban's religious narrative of the Islamic governance system has roots in thoughts and theories that have been raised by Islamic scholars in past centuries. Many of these theories are the product of their jurisprudential interpretations, and since these

interpretations have not been updated, there is a need to review and reconsider these old readings with due consideration to the complexities of today's interactions and relations, while also considering the spirit and purposes of Islamic law.

In general, by taking into consideration the findings of the research:

The civic space which was established before the fall of the republic government in Afghanistan has been affected by specific religious thoughts and interpretations under the rule of the Taliban regime; if it continues, the activities of non-governmental organizations and civil society will be eliminated. The insistence of the current government on excluding women and their participation in society, ignoring people's role in decision-making, and increasingly restricting the civil and political freedoms of the people put Afghanistan in more considerable national and international isolation. A trend of national development, economic improvement, and Afghan society's growth requires a suitable civic space where people can freely express their demands to the authorities. It is the duty and responsibility of the human rights leaders and defenders to advocate with their advocacy programs focusing on human values in Afghanistan and the global level and take measures for the future of Afghanistan. Undoubtedly, this research can open the path of academic and specialized activities for other researchers regarding civic space and preserving human rights values in Afghanistan.

This research needs to be furthered; each topic can provide a comprehensive academic research platform for other researchers. I thank the colleagues who collaborated with me in conducting this research, and I expect those who receive this research to cooperate in conveying its summary to educated people.

Recommendations

To the de facto Authorities of the Taliban

- Act by considering the development of today's world, the development of international relations, technology, communication, economy, and culture, to establish a governance system in which the dignity and human freedoms of all members of the society, including women, men, youth, children, intellectuals, religious scholars, ethnic and religious minorities are guaranteed.
- Launch an academic and religious discourse for the development of the thoughts and ideas in the book "The Islamic Emirate and its System"; the Afghan people's civil and political rights and freedoms should be reflected in a constitution that must guarantee equal rights of all citizens and their human, socio-political, economic, and cultural rights.
- Exclusion of women from society and increasing restrictions on education, study, work, enjoyment of life, and their participation in development has put Afghanistan in international isolation, which is not seen in any other Islamic country and is in contrast with the teachings of the religion of Islam and international human rights documents. It is

expected that the urgent removal of these restrictions will put an end to the disappointments of Afghan women, girls, and families, which is due to the current situation.

- The existence of civil organizations, media, and peaceful assemblies is not contrary to the values of Islam; they can play an influential role in raising awareness, civil education, academic research, community development, and ensuring justice. End restrictions against these organizations.

To the International Community

- The current de facto government in Afghanistan has restricted the space for civil activities and respect for the human, civil, and political rights of the Afghan people to prevent Afghanistan from becoming the center of extremism in the region and world; in addition to your humanitarian cooperation, it is required to condition your interactions with the Taliban by all possible means to revive and improve the civic space in this country.
- Do not overlook the cruelty, widespread violation of human rights, restrictions on women and girls, discrimination, and deprivation of political and civil rights of religious minorities by the Taliban in Afghanistan.

To the UN

- Advocate for serious communication with the de facto authorities of the Taliban during diplomatic engagements and dialogues. Prioritize discussions that focus on ensuring the safety and security of individuals involved in civic spaces in Afghanistan.

To the Organization of Islamic Cooperation

- Afghanistan stands out as the sole member country within the Organization of Islamic Cooperation where a significant portion of Islamic and human rights, particularly those of women and girls, have been systematically denied, notably in areas such as education and employment. We urge your organization to spearhead a sustained academic-religious discourse and dialogue, hosting conferences, and facilitating observational visits by influential Islamic nations for Afghan religious scholars. Such initiatives can play a pivotal role in encouraging the Taliban government to reconsider its current policies, which are perceived as both violent and in violation of fundamental human rights.

To International Human Rights Organizations

- Through continuous monitoring and reporting on the human rights situation in Afghanistan, particularly focusing on imposed restrictions on civil activities, the right to peaceful assembly, freedom of expression, and the establishment of civil and political organizations, it is crucial to keep the global community informed about the developments in the country. Additionally, intensify legal efforts to support human rights defenders, victims of violence, and civil and media activists in Afghanistan.

To Afghan Civil Society Organizations and Human Rights Defenders

- Vigorously and resolutely document widespread human rights violations, and actively contribute to reporting to international human rights organizations through periodic and shadow reports to United Nations human rights committees.
- Initiate educational programs on human rights for the youth within the country, aiming to fill the void left by departed civil activists and human rights defenders.

To International and Internet Media

- In light of the constrained access to information and limited freedom of expression within the country, dedicate a segment of publications from international organizations and online platforms to document, report, and advocate against human rights violations. Emphasize the significance of civil activities and foster a network among civil activists.

To Religious Scholars

- Acknowledge the contemporary world's developments and progress by engaging in academic studies and research to evolve the Islamic governance system. Explore its harmonization with international human rights laws and covenants, breaking the existing intellectual stagnation.

To the Afghan Diaspora

- Address the problems and challenges of civic space in Afghanistan through constructive dialogues and legal actions. Emphasize respect for common human values, unity, and refrain from engaging in discriminatory practices.

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