

The Struggle for Women's Political Rights in Afghanistan: A Review of Legal Frameworks and Implementation Challenges (2001-2021)

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Abstract: *This paper reviews the evolution of legal frameworks for women's political rights from 2001-2021. It analyzes Constitutional provisions, laws, and Afghanistan's stances on international treaties related to gender equality against persisting obstacles that have hindered translating these formal guarantees into substantive empowerment. The scope encompasses key civil rights of women's socio-economic inclusion, protection from violence, political representation, and role in ongoing peacebuilding.*

Key Words: *women's political rights, legal frameworks, gender equality, conservative barriers.*

1. INTRODUCTION :

Women's rights in Afghan society have undergone major upheavals amid the country's continued instability and conflict since 2001. Afghanistan has one of the worst global records on gender equality indicators (Human Rights Watch, 2021). However, given intense international involvement after years of repressive Taliban rule (1996-2001), Afghanistan has also seen improved legal protections for women encoded in Constitutional reforms and accession to international treaties. Still, substantial gaps remained in translating these formal guarantees into substantive rights and empowerment.

This paper reviews the evolution of Afghan women's political rights from 2001-2021 by mapping Constitutional provisions, statutory laws, and global human rights commitments in Afghanistan related to gender equality against analyses of their implementation. It examines if sufficient frameworks exist to promote Afghan women's liberties and public participation and what obstacles have hindered these. The scope encompasses key civil rights pertaining to women's inclusion in socio-economic spheres, protection from violence, political representation, and role in the ongoing peacebuilding process.

The paper is divided into six sections. Following this introduction, Section 2 reviews women's legal rights under the 1964/1977 Afghan Constitutions in force till 2004. Among the constitutions before the constitution of 2004, we considered these two constitutions because the constitution of 1964 laid the foundation of the royal constitutional system and the constitution of 1977 laid the foundation of the republic. Section 3 charts Taliban-era policies that disenfranchised Afghan women. Section 4 analyzes the current 2004 Constitution's gender equality provisions. Section 5 explores gaps between legal guarantees on paper and realities in practice caused by contradictory domestic laws, conservative social barriers, and lax enforcement. Finally, Section 6 examines unaddressed gaps between Afghanistan's stances on international treaties advancing women's rights versus lingering discrimination in national legislation.

2. Women's Rights Under 1964/1977 Constitutions

Afghanistan's two pre-Taliban constitutions had established legal gender equality. The 1964 Constitution enshrined equal fundamental rights and duties for men and women (Chapter 1, Article 25). It guaranteed Afghan citizens equal protection under the law regardless of sex (Moghadam, 2003). Afghanistan's 1977 Constitution, based on the 1964 document also formally upheld gender equality.

During its progressive decades (1964-1978), Afghanistan took major steps towards women's emancipation, such as voluntary unveiling movements and increased women's education and labor force access. Kandiyoti (2007) notes that in 1977, over 15% of parliament members were women, while women comprised 40% of university students, 70% of teachers, 30% of civil servants, and 40% of doctors in Kabul. "Afghan women have been active in the public arena

since the early 1960s, and their integration and participation in political, social, and cultural life was state policy." (Kandiyoti, 2007)

3. Repression of Women's Political Rights Under the Taliban (1996-2001)

The Taliban regime in Afghanistan (1996-2001) enforced the most draconian interpretation of Islamic Sharia law to eliminate women from public life and visibility virtually. Human Rights Watch (2001) called this gender apartheid "among the most repressive official policies towards women anywhere in the world." Their misogynistic laws and diktats turned women into second-class citizens stripped even of basic human rights.

3.1. Education and Employment Restrictions

The Taliban banned education for all Afghan girls above eight years, shutting down girls' schools and female enrollment dropped from 32% in 1996 to just 0.068% (Graham-Harrison, 2021). Women were barred from employment outside home, getting fired from all positions as teachers, doctors, and civil servants, destroying their financial autonomy. Uzbek (2001) notes that the Taliban first targeted women in public service professions to discourage female employment altogether.

"Teachers and female students were forced to stay away from schools, and women civil servants lost their jobs...the new ruling has tremendously increased female unemployment." (Uzar, 2001)

3.2. Attire and Mobility Restrictions

The Taliban forced all Afghan women to wear an all-concealing blue burqa, denying them individual sartorial choices. Violators were publicly flogged or beaten. Women could not venture outdoors without a close male relative escort and no taxi driver could transport women without such guardian (Zulfacar, 2006). This severely restricted women's access to hospitals, markets and relatives.

"My 22-year old daughter, who used to go shopping, to the tailor, and visit her sister by herself, is now forced to be accompanied by her 12-year old brother. This is humiliating." (Afghan housewife under 1996-2001 Taliban rule, quoted in Zulfacar, 2006)

3.3. Violence and Rights Violations

A 2001 survey by Physicians for Human Rights found that 97% Afghan women suffered physical abuse, mental illness or both under Taliban torture and violence, including public executions and floggings for petty offenses (Kandiyoti, 2007). Forced child marriages and honor killings increased as women had no legal recourse against domestic abuse. They were punished as adulteresses when reporting rape while rapists went free. Such institutionalized violence and dehumanization of Afghan women under the Taliban was termed gendercide by rights groups (Uhlman, 2002).

"A woman caught trying to flee Afghanistan at the border with Pakistan was shot dead in front of other women...she was killed as an 'example' to others." (Eyewitness account, November 1999; quoted in Uhlman 2002)

4. Gender Equality Under 2004 Constitution :

Afghanistan adopted a new Constitution in 2004 following the post 9/11 Bonn Agreement backed internationally. It made Afghanistan an Islamic Republic with Presidential system and bicameral legislature. The 1964 Constitution provisions on gender equality were reintegrated and also expanded upon.

4.1. Equal Rights and Non-Discrimination

Article 22 retains the standard, "Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law." (AFC, 2004). This embodies formal equal citizenship.

Article 44 upholds equal educational rights for women and men (Chapter 2, Article 44). Women's equal participation in determining Afghanistan's political, social and economic order is highlighted since the Preamble. Article 83 mandates inclusion of both women and men from all ethnic groups in political power structures.

4.2. Protections for Women and Families

Critically, Article 54 obligates the Afghan state to adopt special measures to realize women's liberties and protect women from discrimination: "Family is the fundamental pillar of the society, and shall be protected by the state...The state shall adopt necessary measures to...create a conducive environment for the realization of equal rights of women" (Chapter 2, Article 54).

Such Constitutional mechanisms promise Afghan women enhanced legal safeguards compared to earlier provisions. International actors like UN Women underlined that the 2004 Constitution forms sufficient legislative basis to promote Afghan women's socio-political participation and rights without discrimination, if concrete enforcement steps are implemented (UN Women, 2022).

"UN Women welcomes Afghanistan's...Constitution adopted in 2004 which includes provision to promote gender equality and envisages at least 68 seats reserved for women in Parliament." (UN Women, 2022)

5. Obstacles in Translating Legal Guarantees into Women's Empowerment :

Despite Constitutional requirements, women's lived legal rights and empowerment continues facing challenges in Afghanistan from contradictory laws negating formal safeguards as well entrenched structural barriers blocking access to redress.

5.1. Contradictory Laws Undermining Protections

Post-2004, certain legislation passed undermined Constitutional gender equality prerequisites. The Shiite Personal Status Law of 2009 restricted Shiite Afghan women's rights related to family and marriage issues like minimum marriage age, marital rape and mobility in direct violation of the Constitution and international law (Abirafeh, 2009; Oates, 2013). It was revised only after global outcry but illustrated a lack of checks against religious law infringing upon women's rights.

"Shiite conservatives pushed through legislation that includes articles stipulating when girls can be married and that wives must submit to sex with their husband every four days unless ill or menstruating." (Oates, 2013)

5.2. Socio-Cultural Barriers Hampering Access to Justice

The landmark Elimination of Violence Against Women (EVAW) Law of 2009 criminalized violence against Afghan women. However, subsequent application issues make such legal protections void. Continued rise in violence against women has been documented but prosecution and conviction rates remain extremely low under 5% (Human Rights Watch, 2021). Victim blaming attitudes revictimize abused women seeking justice while perpetrators enjoy impunity. Reports find most Afghan women are unaware of their Constitutional rights and disempowered from accessing them by poverty, restricted mobility and lack of institutional outreach (UNAMA, 2021).

"Survivors confront stigma, fear of reprisal, and life-threatening risks when they report violence...Lack of public awareness regarding the [EVAW] law remains an obstacle." (UNAMA, 2021)

5.3. Gaps Between International Commitments and Domestic Legislation on Women's Rights

Post Taliban-era Afghanistan has reaffirmed global consensus by signing major human rights treaties that guarantee gender equality like the Convention for Elimination of All Forms of Discrimination Against Women (CEDAW). However, substantial gaps and discrepancies remain between Afghanistan's stances on international legal frameworks versus concrete national and local measures implemented for women empowerment.

5.4. CEDAW Ratification

Afghanistan ratified CEDAW in 2003 without reservations, thereby consenting to amend all discriminatory legislation against women and taking appropriate action for realizing women's holistic equality and non-discrimination in social, economic and cultural fields (CEDAW, 1979; UN Women, 2022). Article 2 mandates parties to eliminate discrimination by state authorities, legislatures and courts.

However, critics contend that CEDAW principles continue being violated in Afghanistan's Constitutional exception clause allowing adherence to Sharia law (Kandiyoti, 2007). Significant CEDAW non-compliance also persists in family law, marital rape, underage marriage, inheritance inequality, freedom of movement, employment and political participation for Afghan women (Jehangir, 2021).

"Child marriages, forced marriages and spatial restrictions on women's mobility all persist as part of...'traditions'." (Jehangir, 2021)

6. Conclusion :

In conclusion, while Afghanistan has established improved Constitutional requirements and legal mechanisms post-2001 to promote gender equality, women continue facing violations, discrimination and restricted liberties. Contradictory domestic laws undermine Constitutional safeguards. Entrenched socio-cultural barriers also block Afghan women's abilities to access and exercise rights.

Substantial gaps exist between Afghanistan's formal commitments to international women's rights conventions versus building accountable national enforcement systems. There remain discrepancies in family law, protections

against violence, marriage rights, inheritance, mobility and participation. The Taliban takeover jeopardizes even the modest gains made.

Sustained multilevel efforts are imperative - politically, socially and through policy reforms - to transform Afghanistan's formal human rights guarantees into substantive advancement of women's equality, inclusion and empowerment. Their security and liberties need safeguarding on ground through sensitization, progressive law implementation and rights-based governance.

7. Recommendations:

- Women's engagement in any peace-building and reform procedure, from planning, policy-making,, implementation and monitoring.
- Constitutional and legal reform, with focus on gender equality and equal political rights for all citizens, including women/girls.
- Bridge gap between international commitments and Afghanistan's domestic legislation by criminalizing all types of gender-based violences.
- Engaging men/boys, specifically in further/rural areas, in any awareness-raising programs regarding women's rights, specifically women's political rights.
- Invest in female education and economic opportunities to change restrictive norms and build women's independence and decision-making

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