

Women's Right In Afghanistan*

Abstract

As traditional and Islamic norms as well as the past decades of conflict in Afghanistan women has always been the most affected victims, women faces various kind of difficulties for reaching to their rights despite the fact that women progressed after Taliban regime but overall improvements have been uneven still there is long way to get all the rights laws has prospected, The volatile security situation and traditional social and cultural norms continue to limit women's and girls' role in public life and deny them the full enjoyment of their rights. This researches overview the basic rights women have been prevented during and after Taliban regime.

This paper is written using the Constitution Afghanistan Human right commission's reports bases on women rights, trusted national websites, news sites, national and international laws and organization's annual reports.

Keywords: Afghanistan, women, right, education, justice, marriage

* Mariam Danishjo, Master's student.

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Introduction

During the past 30 years of civil war in Afghanistan thousands of people deprived of their very basic human rights especially women who are making 51 percent of Afghanistan's population are the most effected victims. Following the wrong culture, religious opinions and traditional practices such as early marriage, limiting women's education, gender inequality and insecurity limited women's access to education and having basic rights and involvement in society.

In last past years Afghanistan had 500 cases of women sit fire themselves to escape forced marriage, 85 percent of women do not have formal access to education, 1 in 50 women die during pregnancy and child birth, more than 200 girl child and women raped and beheaded cases registered yet there is much silence on these acts. The resource of all these problems are women's illiteracy although the situation is changed for most of women than during Taliban regime like for the improvement of afghan women status, Karzai government established Ministry of Women Affairs, Afghan independent Human Rights and by the help of NGOs some improvements have been made in regard of women rights, but still according to researches Afghanistan is the most worse country to be a women, Nevertheless, Women in Afghanistan faces major obstacles in recognizing basic human rights.

A joint study carried out by a few international and local organizations in 2010 on the obstacles against female education in Afghanistan, found that early marriage, insecurity, lack of family and community support, lack of female teachers, far distance of schools, very low quality of education, no girls' school and violence are the main barriers which limit women's education participation.

This article briefly discusses about the women rights during Taliban and post-Taliban up to now and the major obstacle of afghan women's access to their basic rights. Since the establishment of new government on 2001 women's rights has been started developing a lot, by supporting of donors and international organizations many INGs has started working on women's right women and girls continued to be actively participate in government and having access to their rights as education, health care facilities and employment. Giving equal rights for men and women on the new constitution, establishing the Ministry of women, increasing

women's role in peace negotiation and peace building, placing them in different stage of political process and approving of the EVAW law were the very seeable signs of women's development. Beside all these efforts on increasing women's access to their rights they are still some obstacle which are depriving them from access to their rights, early and forced marriage is a common problem of women which deprived them to get access to their rights, 80 percent of marriages in rural areas are forced and against women's wish which results many other violence in their married life. Many of these women after facing violence cannot have access to judicial system to compline. Access to justice and legal aids are one of the basic rights which are mention on international and nation laws and it should be provided equally to men and women though. Although women have equal rights under Afghan law, in practice these legal protections are under-enforced.

The Aim of writing this paper is to examine the changes of women's rights from Taliban regime up to now and the challenges on access to education and judicial system for today's afghan women. The paper is ending up with conclusion and recommendations for improving women's right in big and rural areas.

Women's Right During and After Taliban Regime

1. During Taliban Regime

The Taliban, which began as a religious movement of students educated in traditional Islamic schools in Pakistan and Afghanistan, emerged as a military force in 1994. The Taliban draws its support primarily from the country's largest and historically dominant ethnic group, the Pashtuns.¹ During their regime women had no rights Taliban enforced some of the most egregious limitations on women's rights in modern statehood, preventing women from taking part in the most basic activities—from going to school to working outside the home to even going out unaccompanied by a male relative. Women were denied for working outside and they could not deal with male doctors. Participation in politics were zero. Women were getting stoned till died if they would commit any crime they were not allowed to complain or being judged in courts. In public, women were required under threat of severe punishment to

¹ Concentrated in the eastern and southern areas of Afghanistan, the Pashtuns are, like their neighbors in Pakistan, overwhelmingly Sunni Muslims.

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wear the chadari². Women in Afghanistan have suffered a catastrophic assault on their human rights more than twenty years of war and under the repressive rule of the Taliban. Indeed, the Taliban's discriminatory policies violated many of the basic principles of international human rights law. These rights include the right to freedom of expression, association and assembly, the right to work, the right to education, freedom of movement, and the right to health care. What is more, as Human Rights Watch has noted, "the discrimination [that Afghan women face] is cumulative and so overwhelming that it is literally life threatening for many Afghan women³." According to the New York Times on 1998 the Taliban ordered the closing of more than 100 private schools where that have been teaching girls. All these rules and inequality and violence rules came to force by Taliban on 1996 while the Afghan law had been given the equal rights on 1923. The punishments for disobedience of forced Islamic law were severe and often fatal; floggings, stoning and cutting finger.

2. Post-Taliban

Since the US-led invasion in 2001, a number of steps towards gender equality were slowly made in Afghanistan. Women and girls got greater freedom like participating in public life and access to education, health care, access to justice and employment. The new constitution in 2004 enshrined the women's rights also for supporting and well way of insuring women's rights Afghanistan adopted the Elimination of Violence against Women law in 2009 which codified crime for acts of physical, economic, and emotional violence committed against women⁴. The enforcement was very weak that there is still some difficulties women are facing like violence, inequality, education and freedom though women and girls started going back to school participation in politics but many of these freedoms are only afforded to those living in urban areas. In 2011 Afghanistan named as the most dangerous country for women. It means Afghanistan needs to work more on women rights which is the half of country's population.

Now, as women face further peril with the intensification of conflict following the September 11 attacks on the United States, the international community must make a firm commitment to uphold women's human rights in any post-conflict settlement. The impunity that has characterized Afghanistan's civil war must not also come to characterize Afghanistan's post-conflict reconstruction and development.

²Head and body covering cloth

³The Taliban's war against women, US Department of States, 2001 Website:
<http://www.state.gov/j/drl/rls/6185.htm>

⁴<http://zandarafghanistan.blogfa.com/post-9.aspx>

Few years later after the Taliban regime on 2001, women and girls in Afghanistan have gained greater freedom to participate in public life and access to education, health care, and employment. This is the case particularly in the capital, Kabul, where the deployment of foreign military forces under the International Security Assistance Force (ISAF) has helped bring security. Even in Kabul, however, many Afghan women still face abiding threats to their personal security from other civilians or armed men belonging to various political factions. Outside Kabul, the situation is one of acute general lawlessness and insecurity, as there is no ISAF presence and rival warlords control security conditions. In these areas, more than in Kabul, Afghan women continue to face serious threats to their physical safety, which denies them the opportunity to exercise their basic human rights and to participate fully in the rebuilding of their country.

In 2011 Newsweek/The Daily Beast analyzed dozens of data points for 165 countries to determine which countries offer women the most expansive rights and the best quality of life. Below are the results for Afghanistan:⁵

Score: 164 (out of 165)

Overall score (out of 100): 2.0

Justice: 8.4

Health: 2.0

Education: 41.1

Economics: 55.3

Politics: 16.6

Access to Education

Almost three decades of conflict devastated Afghanistan's education systems and institutions especially the Taliban regime, they were against women education. Since the fall of the Taliban in 2001, educational resources for women have become more readily available. The right to education for both girls and women is anchored in articles forty-three and forty-four of the 2003 constitution:

Article Forty-Three Ch. 2, Art. 22

⁵<http://www.trustededucation.org/resources/life-as-an-afghan-woman/>

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The fall of the Taliban allowed government and international donors to build education system in Afghanistan schools and universities reopened in big cities and it resulted improvement of female education though it was uneven, after years of conflict and now strong traditional social and cultural norms caused to prevent women and girls progresses, although the women and girls found their way for gaining education and participating in politics but still they continue face several government and social discriminations. The Constitution gives the equal rights to men and women but local customs and practices that discriminated against women generally overcome in many of the country especially in rural areas. According to a recent report of UNDP on 2013 the literacy rate for females over the age of 15 is 12.6% compared to 43.1% for males, and only 40% of females attend primary school and 6% attend secondary school. Currently, there are 70 private universities in Afghanistan; over 200,000 students attend college — but only 18% are women, and 82% men.

According to the annual report of AIRHC on 2015 more than 94% had access to education and 45% is girls and it shows that girls are leaving school due to these reasons; early marriage, insecurity, distance, lack of women teachers, lack of school buildings geographic location and poverty. And recently girl's school became the target of Taliban attacks on May 2106 three girls school have been burned and 437 schools have been destroyed by Taliban on 2014.⁶ Afghanistan has the highest level of gender disparity in primary education in the world, with only 71 girls in primary school for every 100 boys. There are also big differences in enrollment between rural and urban areas, with girls from rural poor families being most affected. Although the constitution gives the free education rights⁷. Article Forty-Three Ch. 2, Art. 22

Education is the right of all citizens of Afghanistan, which shall be provided up to the level of the B.A. (lisâns), free of charge by the state. But due to economic and poverty problems most of families do not have the ability of buying stationery materials and books, they ask their children to work for daily life expenses or selling daughters for settling debts to keep the rest of family alive with the taken money. That's why most of girls are being kept away from having access to education. In another article the Constitution obliged state for balancing and promoting of education for women. Article Six Ch. 1, Art. 6:

⁶<http://www.tolonews.com/fa/afghanistan/25394-163-afghan-schools-38-health-centers-hit-in-2014-un>

⁷ Constitution 2004, Ch. 2, Article 22

*The state shall devise and implement effective programs for balancing and promoting of education for women, improving of education of nomads and elimination of illiteracy in the country*⁸. But in most of urban areas there is still no women teachers Paktia is a province with half million population with no female teacher. All these factors gives hand to hand and make Afghanistan the worst place to be a women.

Obstacles for Access to education

The problem of women's education in Afghanistan is one which attracts the attention immediately. According to the researches and reports done, the main obstacles of women/girl's education are;poverty, insecurity, early marriage, community's opinion to award women education and education quality.

Inequality in access to education

Worldwide 57 million children, including 31 million girls, are out of school and two thirds of illiterate adults are women. In developing countries, adolescent girls are more likely to drop-out of secondary school than boys, particularly in rural areas⁹. Article 10 of convention on the Elimination of all Forms of Discrimination against Women According to this article, States have the obligation to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and to ensure, same conditionfor access to studies at all educational levels, same quality of education; the elimination of any stereotype concept of the roles of men and women and the reduction of female students deep-out. As well as the UNESCO Convention against Discrimination in Education, CRC, International Convention on Economic, Social and Cultural Rights as the international conventions that Afghanistan also had signedthem guarantee girls and women's right to education combining general provisions on non-discrimination with specific provisions on the right to education. Afghan national laws also guaranteeing the female education at national level, but there are still some obstacle to fight with because mostly laws and convention are not getting implemented in action.

According to UNESCO reports "Afghanistan is one of the poorest and least educated countries in the world with large gender and geographical disparities in relation to access to

⁸ Ch.2 Article 32

⁹ Right to Education Project, <http://www.right-to-education.org/issue-page/marginalised-groups/girls-women>

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education”¹⁰. The number of female enrolment in higher education is less than primary level, According to MoHE in 2012 about (99,530) students were studying in the public universities across the country of which 19% were female and in 2014, there are about 15, 2354 students whom 20% are female students¹¹.

Enrolment of students in higher education from 2002-2012:

Year	Number of Students		
	Male	Female	Total
2002	27,000	4,200	31,200
2004	24,500	6,200	30,700
2006	30,600	8,800	39,400
2008	48,200	12,900	61,800
2010	62,900	14830	77,730
2012	81,785	19,215	101,000

(Source: Samady, 2013)

Insecurity

In some cities insecurity is the other reason of not developing of education and child schooling according to world peace organization in 2012 Afghanistan is the second insecure country after Somali. On 2012, 330 schools got closed due to insecurity and 180000 students deprived of school. On May 2106 three girls school have been burned and 437 schools have been destroyed by Taliban on 2014¹². The cities and urban areas where government does not have fully under control Taliban attacks on female schools, students and teachers. The UN reported more than 1,000 attacks on education in 2009-2012, including schools being set on fire, suicide bombings and remotely detonated bombs, killings of staff, threats to staff and abductions”. Therefore parents are not allowing their daughters for going school.

Poverty

Poverty is another factor of depriving girls/women's education, long period of conflict and war in Afghanistan caused not to develop economically. According to World Bank report on 2010 Afghanistan is one of the poorest country after Somali. Families are not able to provide education for their children or they prefer to educate their boys rather than girls. Although

¹⁰ UNESCO Country Programming Document –UCPD, 2011

¹¹<http://mohe.gov.af/?p=ehsaya>

¹²¹² Tolo News local TV channel, From: <http://www.tolonews.com/fa/afghanistan/25394-163-afghan-schools-38-health-centers-hit-in-2014-un>

education up to fourteenth grad is provided free according to the education law but families are encouraging their children to work and earn money as result children grow up uneducated. The only way of ending up with poverty cycle is educating women as children of educated women is more likely to join and continue school.

Early age and forced marriage

“I was innocent, but I had to get married to my husband because of my brother’s problem. I said that I did not want to get married to him, but no one listened to my voice.” —Nabila, nineteen year-old Pashtun female.

Forced marriage has been formally outlawed at least since the adoption of the current version of the Civil Code in 1977, though similar interpretations were also applicable in the Taliban period¹³. Both Afghan law and Islamic legal traditions guarantee men and women equal authority in determining their marital partner¹⁴.

The definition for Child marriage is; a formal or informal marriage before reaching to 18 age. Child marriage is a human rights violation and it threatens the health and rights of girls.

Afghanistan has joined the CRC in 1996 as on the convention mentioned all parties are obliged to make their national laws according to convention, according to this commitment civil law of Afghanistan described child is a person who has not completed 18 age and marriage age is at least 16 years old and 15 years old by the permission of father¹⁵. Marriage age in Islamic law is not by age but by maturity which is when a girl reaches to the age of puberty. Many Muslim communities and Islamic scholars agree with the internationally recognized age of maturity, eighteen. Moreover, many Muslims argue against child

¹³During the Taliban period, the Civil Code was pending. Interpretations of Hanafi jurisprudence and executive decrees by then-head of state Mullah Omar were relied upon in place of the civil code. Mullah Omar issued a decree in September 1998 that included four articles related to the issue of running away, which read (translation by USIP): “Article 1: In a murder case, Afghan Muslim citizens cannot give a woman as Deyah (blood money), compromise or under any other title to the family of the murdered; Article 2: (1) Afghan Muslim citizens cannot force a widow to get married with a member of the husband’s family; (2) A widowed woman can get married at her full discretion under provisions of Islamic Sharia; Article 3: All staff members

of the Emarah and judges are obliged to seriously punish those who violate provisions of this decree.” See Official Gazette number 788, decree number 104, September 9, 1998, copy on file with authors.

¹⁴A March 2012 declaration by the Ulema Council expounded at some length on the rights of women under Islam, including the right to freely choose her spouse. See the English translation of the Ulema Council’s declaration about women, March 2, 2012, at D. <http://afghanistanalalysis.wordpress.com/2012/03/04/english-translation-of-ulema-councils-declaration-about-women/>. In Dari, <http://president.gov.af/fa/news/7489>.

¹⁵Article 71 civil law

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marriage because Islam mandates the men and women should choose their partners freely and children are unable to do so.¹⁶

According to UNICEF researches More than 46% of Afghan girls are married or engaged before 18 age and Almost 15% of girls are married by 15. Women activists say up to 80 percent of marriages in poor rural areas are either forced or arranged. Most of the girls are getting marry with old men over 40 – 60 years old and they meet first time on their marriage day mostly these cases happens in cities where women do not have full access to their rights and they are illiterate, the other side of this child marriage is lack of security, risk of kidnapping and rape that makes many families to force their young daughters into marriage. They have babies while still young teenagers, increasing health problems and risking death for themselves and their children (the risk of death during pregnancy or childbirth for girls under 14 is five times higher than for adult women).

In EVAW law, marriage under age of 18 is defined as violence and marriage on propose of solving private conflicts or forced by parents is a crime and the commit will get the punishment of 10 years of imprisonment. Beside early age marriage other violence which is forced marriage take place in most of areas this violence form of physical, psychological, and sexual abuse remains prevalent and not reported to the related organs. Women and girls are being forced into marriages with old men or too young boys and in some areas they have been forcing to marry with gunmen which are resulting suicide. In (2007) 500 women set fire to themselves to escape forced marriages (there is many more cases which are not recorded or reported to the media). The other tragic type of getting marry is bartering daughters to settle drug debts, Bartering girls in marriage to pay off loans and not just drug debts has been practiced in the region for centuries. But it has increased exponentially due to poverty brought on by last 30 years of war¹⁷.

Early marriage directly effects girls/women access to education According to the Department for International Development, “more than 50 per cent of girls are married by age 18” in Afghanistan. As a result they are not allowed to attend school because of their domestic responsibilities and motherhood.

¹⁶ Sani Ahmet Yerima , Nigerian senator

¹⁷ Child Brides, Drug Lords and One Woman's Journey through Afghanistan. Case study from : <http://www.theatlantic.com/>

Access to Justice

Women's access to justice means that the justice system, fairly and without discrimination, ensures women's equal rights and interests. On the second chapter of Afghan constitution equality between men and women is discussed and any kind of discrimination among citizens are prohibited¹⁸. Article Twenty-Two: *"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."* According to this article of the constitution all citizens are having equal right. but it's not implement -able in all areas most of the rural areas still do not have access to justice and they are solving the conflicts through informal legal sectors many people facing lack of adequate legal information and limited basic of their rights and access to legal aid systems for some people it takes hours to come and receive legal aid. Access to justice is closely related to human development especially in a post conflict country like Afghanistan. Access to justice also requires a democratic governance to provide all citizens regardless of their gender, race, religion, age, class or political views with equal access to justice.¹⁹

An overview of justice system a brief discussion will be provided about afghan women's right to access to justice and the problems they are facing. On 2002 Afghanistan established the Ministry of Women's Affairs. The governmental body which is responsible for implementing the policies of the government of Afghanistan in the field of employment, education, health, women's rights, leadership and political participation²⁰. Afghanistan Independent Human Rights Commission is another official governmental organization which has especial section for following cases of violence against women. Now that the function and role of governmental organization is discussed it's important to know which factors are impacting the access to justice for women, the obstructions are; lack of adequate laws and regulations, court backlog, weak enforcement of law, lack of clear laws regarding violence against women, and also lack of legal aid by women, most of women are not comfortable to share or to discuss with their man- lawyer. The constitutional and EAW's guarantees and protections from any kind of violation and inequality against women have been rarely applied in practice most of women still do not have access to formal judicial system and they have been judged in

¹⁸ Ch.2 Article 2

¹⁹ Parker, Christine. (1999). Just lawyers: Regulation and access to justice. Oxford: Oxford University Press

²⁰ <http://www.wclrf.org.af/>

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traditional justice mechanisms, many women when becoming hopeless of taking their rights they suicide themselves, Afghan law is deeply Islamic and traditional in rural areas women/girls are being judged by the elders of their village. According to a research done by women and children research organ, 46 percent of women fear from their husband to go to court and 42 percent does not want due to slow process of cases following. A United Nations reports in 2015 shows only 5 % of 110 cases have been solved by judicial systems also the UN reports on the EAW law, of 2,299 cases reported to the Afghanistan Independent Human Rights Commission (AIHRC) that could be classified as a crime under the EAW law, only 7 percent were followed through with indictments by prosecutors.

Conclusion

Comparing to Taliban regime during past years Afghan women could take new steps and progresses in the enjoyment of their human rights and participating in political, the new constitution although it's not guaranteeing the equal rights all over the country but still it is enshrines gender equality as a basic and important right of women and forcing the other national law to oblige it. Girl's education has improved Women in urban areas regained some measure of access to public life, education, health care, and employment; however, the lack of education perpetuated during the Taliban years, and limited employment possibilities, continued to impede the ability of many women to improve their situation. Number of NGOs working on women's issues and rights are improving²¹. Women in urban areas regained the access to public life and chair in parliament (20 % of parliament chairs is assigned for women).

In short providing girls with an education helps break the cycle of poverty: educated women are less likely to marry early and against their will; less likely to die in childbirth; more likely to have healthy babies; and are more likely to send their children to school. When all children have access to a quality education rooted in human rights and gender equality, it creates a ripple effect of opportunity that influences generations to come.

As a State party to the Convention on Elimination of all Forms of Discrimination against Women (CEDAW), Afghanistan has obligations under international law to take necessary actions to prevent, protect against and respond to violence against women, whether perpetrated by private or public actors.

²¹ (United Nations 2004, the situation of women and girls in Afghanistan, United Nations Economic and Social Council, E/CN.6/2005/5, 22 December, pp.16-17 – Attachment 3).

Recommendations

Afghanistan will not be able to move ahead unless half of the society who are women, is also given equal respect, rights, and opportunities to be a part of the society, palpitation and the development of the society. A change is a must for cultural practices in order to raise women's literacy level. The experience of other post-conflict societies suggests that education and vocational training are indeed key to economic independence and participation in political and decision-making processes.

There is some key opportunities described for action in Afghanistan's women education, early marriage problem, and access to judicial system, particularly to improve education for girls and increase education quality. Among these are opportunities to strengthen and develop teacher training, increase the number of qualified teachers, and assess if and how the NGOs and community-based organizations might take on a larger role in the education sector.

Integrating these suggestions into government, community, civil society, and donor partnerships can contribute to significant improvements in education for Afghan children, particularly girls.

- Include capacity building in programming and budgeting in the aid given to the Ministry of Women's Affairs.
- Help the Ministry of Education develop curricula that explain women's rights under the civil code and CEDAW in terms accessible to both male and female students.
- Women and girls are specifically affected by insecurity, since it deprive them from their freedom of movement to reach schools, health-care facilities and work .Add more security sectors in rural areas of the country, so that Afghan women activists can operate there effectively.
- Small business projects for women should be established so that women get economy freedom.
- Create an effective mechanism for proper registration and follow-up of violence against women cases that are mediated to ensure protection of victims once they return to their families/communities.
- Expand programs that provide technical assistance and support for provincial prosecution offices and courts, particularly aimed at implementation of the EVAW law.

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- Build the capacity of ERAW law institutions which perform mediation to develop an extensive pool of mediators – men and women – who are trained and certified.

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